



JOHN J. TECKLENBURG  
MAYOR

*City of Charleston*  
*South Carolina*  
*Clerk of Council Department*

VANESSA TURNER MAYBANK  
CLERK OF COUNCIL

**NOTICE OF MEETING**

A meeting of the Committee on Real Estate will be held beginning at 4:00 p.m., August 14, 2017, at City Hall, First Floor Conference Room, 80 Broad Street. The agenda will be as follows:

**AGENDA**

Invocation – Chairman White

Approval of Minutes: July 11, 2017

- a. Request approval for the Mayor to execute the License Agreement between the City of Charleston and the South Carolina State Ports Authority allowing the State Ports Authority the right to enter City property on Daniel Island known as Parcel EE, Phase 2 (45.976 acres) for the purpose of site preparation in anticipation of the receipt of dredge materials. The property is owned by the City of Charleston. (Parcel EE, Phase 2; TMS: 277-00-00-003)
- b. Request approval for the Mayor to execute the Purchase and Sale Agreement between the City of Charleston and the South Carolina State Ports Authority of the property on Daniel Island known as Parcel EE, Phase 2 (45.976 acres) for \$1.5 million. The property is owned by the City of Charleston. (Parcel EE, Phase 2; TMS: 277-00-00-003) [Ordinance]
- c. Request approval for the Mayor to execute the Amended and Restated Public Improvements Infrastructure Agreement governing the expenditure of TIF funds for public infrastructure improvements in the Magnolia development. The agreement requires the developer, Ashley River Investors, LLC, to construct the City's public service facility, whereupon the 99 year lease the City has on Milford Street facility can be terminated. (Magnolia TIF District) [Ordinance]
- d. Request approval for the Mayor to execute the First Amendment to Development Agreement governing the Magnolia development. (Magnolia Development; multiple parcels totaling approximately 182 acres of real property west of the King Street Extension) [Ordinance]
- e. Request approval for the Mayor to execute the Permanent Easement Agreement

with SCE&G to facilitate the underground electrical line on the City's property at 180 Lockwood along both Fishburne Street and Lockwood Boulevard. The property is owned by the City of Charleston. (180 Lockwood Boulevard; TMS: 460-00-00-013) ***(The Permanent Easement Agreement will be sent under separate cover by the Real Estate Department.)***

f. Consider the following annexations:

- (i) 2210 Weepoolow Trail (TMS# 353-12-00-005) 0.33 acre, West Ashley (District 2). The property is owned by the Stephen & Sheri Wenger.
- (ii) 2000 Indian Mound Trail (TMS# 353-12-00-006) 0.34 acre, West Ashley (District 2). The property is owned by Judy G. Markowitz Living Trust.
- (iii) 1622 Boone Hall Drive (TMS# 353-14-00-136) 0.34 acre, West Ashley (District 7). The property is owned by Amy Brunson.
- (iv) 1848 Sandcroft Drive (TMS# 353-14-00-216) 0.28 acre, West Ashley (District 7). The property is owned by SC Renovation Group.

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) Interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to [schumacherj@charleston-sc.gov](mailto:schumacherj@charleston-sc.gov) three business days prior to the meeting.

a.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Real Estate Committee DATE: August 15, 2017  
FROM: Frances Cantwell DEPT: BFRC  
ADDRESS: Parcel EE, Phase 2  
TMS: 277-00-00-003  
PROPERTY OWNER: City of Charleston

**ACTION REQUEST:** Request approval for the Mayor to execute the License Agreement between the City of Charleston and the South Carolina State Ports Authority allowing the State Ports Authority the right to enter City property on Daniel Island known as Parcel EE, Phase 2 (45.976 acres) for the purpose of site preparation in anticipation of the receipt of dredge materials.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☒

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head		<input type="checkbox"/>
Legal Department	<u>Frances J Cantwell</u>	<input type="checkbox"/>
Chief Financial Officer	<u>Amy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management	<u>Colleen Carducci</u>	<input checked="" type="checkbox"/>
		<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☒

If yes, was funding previously approved?\* Yes ☐ No ☐

\*If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

**\*Commercial Property and Community & Housing Development have an additional form.**

## COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee      DATE: August 15, 2017  
FROM: Frances Cantwell      DEPT: BFRC  
ADDRESS: Parcel EE, Phase 2  
TMS: 277-00-00-003  
PROPERTY OWNER: City of Charleston

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**ORDINANCE:** Is an ordinance required? Yes ☐ No ☒

**ACTION:** What action is being taken on the Property mentioned?

☐ **ACQUISITION**      Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_  
☐ **DONATION/TRANSFER**  
Donated By: \_\_\_\_\_  
☐ **FORECLOSURE**  
Terms: \_\_\_\_\_  
☐ **PURCHASE**  
Terms: \_\_\_\_\_  
☐ **CONDEMNATION**  
Terms: \_\_\_\_\_

☒ **LICENSE AGREEMENT**      Grantor (Property Owner) City of Charleston      Grantee South Carolina State Ports Authority

☐ **PERMANENT**  
Terms: \_\_\_\_\_

☒ **TEMPORARY**

Terms:      The License expires on the earlier of September 30, 2017 or the date of Closing of the sale of the property to the Ports Authority. If the sale does not close, the Ports Authority is required to remove all improvements not related to land disturbance activities.

## COMMERCIAL REAL ESTATE FORM

☐

**LEASE**

Lessor: \_\_\_\_\_

Lessee: \_\_\_\_\_

☐

**INITIAL**

Terms: \_\_\_\_\_

☐

**RENEWAL**

Terms: \_\_\_\_\_

☐

**AMENDMENT**

Terms: \_\_\_\_\_

☐

**Improvement of Property**

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

**Results:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Director Real Estate Management**

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

**NEED:** Identify any critical time constraint(s).

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "**Agreement**") is made and entered into as of the \_\_\_\_\_ day of August, 2017 (the "**Effective Date**"), by and between the CITY OF CHARLESTON, a South Carolina municipal corporation (hereinafter referred to as the "**CITY**" or the "**LICENSOR**"), and the SOUTH CAROLINA STATE PORTS AUTHORITY, an instrumentality of the State of South Carolina (hereinafter referred to as the "**SCPA**" or the "**LICENSEE**").

### RECITALS:

WHEREAS, the CITY owns that certain lot, piece, parcel or tract of land situate, lying and being on Daniel Island, in the City of Charleston, Berkeley County, South Carolina, identified as "PARCEL EE, PHASE 2", measuring and containing approximately 45.976 acres, more or less, of marsh and highland, as more fully shown and delineated on that certain plat by Southeastern Surveying, Inc. entitled, "A SUBDIVISION PLAT OF A PORTION OF DANIEL ISLAND OWNED BY HARRY FRANK GUGGENHEIM FOUNDATION, DANIEL ISLAND DEVELOPMENT COMPANY AND THE CITY OF CHARLESTON LOCATED IN THE CITY OF CHARLESTON, BERKELEY COUNTY, SOUTH CAROLINA," Sheets 1-4, dated January 3, 1997, with latest revision May 21, 1997, and recorded in the Berkeley County Register of Deeds Office in Plat Cabinet M, Pages 309 through 312 (the "**Recorded Plat**"), and being a portion of tax map number 277-00-00-003 (the "**Property**" or the "**Licensed Premises**");

WHEREAS, the SCPA desires for the CITY to grant the SCPA a license to use and occupy the Property, and the CITY is willing grant such license to the SCPA on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals: The aforesaid Recitals, including the legal description of the Property set forth therein, are hereby incorporated by reference herein as if fully restated verbatim.

2. License: The CITY hereby grants to the SCPA, and the SCPA hereby accepts, a license (the "**License**") to enter upon, use and occupy the Licensed Premises for the purposes hereafter provided for the License Period (as defined herein), subject to the terms and conditions set forth in this Agreement. The Licensed Premises are licensed to the SCPA in "AS-IS" condition, and the CITY neither makes nor assumes any representations or warranties, express or implied, as to the condition of the Licensed Premises, including, without limitation, any obvious or latent defects. The SCPA shall only access the Licensed Premises from the SCPA's property designated as (a) Parcel EE, Phase 1; (b) Parcel DD, Phase 1; (c) Parcel DD, Phase 2; and (d) Parcel DD, Phase 3 on the Recorded Plat (collectively, the "**SCPA Disposal Area**") or from the Wando River. The parties do not intend to create a lease or any other interest in real property for the SCPA through this Agreement, and the parties only intend to create a license.

3. License Period: The term of this Agreement and the License (the “**License Period**”) shall commence on the Effective Date of this Agreement (the “**Commencement Date**”), and (unless otherwise sooner terminated as hereafter provided) shall automatically terminate and expire upon the earlier of the following dates or events (the earlier of the following dates or events being referred to herein as the “**Expiration Date**”) (a) the sale or conveyance of the Property to the SCPA, or (ii) at 11:59:59 p.m. (Eastern time) on September 30, 2017.

4. License Fee: As consideration for the License, for the License Period, the SCPA shall pay the CITY a license fee (the “**License Fee**”) in the amount of Five and No/100ths Dollars (\$5.00), the entirety of which is payable in cash or by check upon the commencement of the License Period.

5. Use of Licensed Premises: The SCPA shall use the Licensed Premises solely for the purpose of preparing the site for depositing and managing dredge materials, including but not limited to the removal of vegetation, sampling of the conditions on the site, and grading. The SCPA shall conduct its activities on the Licensed Premises in a lawful manner. The SCPA shall not permit any illegal business or transactions of which it has knowledge to take place on the Licensed Premises. The SCPA shall comply with all federal, state and local laws and regulations in connection with its operations on the Licensed Premises. The CITY makes no representations or warranties with respect to the SCPA’s contemplated use of the Licensed Premises. Nothing herein shall be deemed either approval by or waiver of the authority of permitting or approval authorities, including the City and its boards, commissions, officials or employees. The SCPA further expressly understands and agrees that any and all liability related to its use of the Licensed Premises is assumed exclusively by SCPA. During the License Period, the Licensed Premises shall be closed to the public and accessible only by authorized personnel. The CITY agrees to and shall support the vegetation removal plan selected by the SCPA for the Licensed Premises, provided it is undertaken in accordance with applicable ordinances, regulations and permitting procedures.

6. Utilities: The SCPA shall obtain, if necessary, in its name and at its sole expense, all utility services required for its use of the Licensed Premises throughout the term of this Agreement.

7. Improvements, Alterations, and Repairs: The CITY shall have no obligation or responsibility whatsoever to maintain and/or to make any repairs to the Licensed Premises, or any part thereof. The SCPA shall, throughout the License Period of this Agreement, at its own expense, maintain the Licensed Premises (including any building(s) and other improvements now or hereafter located thereon) in good order and repair and in a safe condition, normal wear and tear excepted.

Except for improvements required to make or maintain the Licensed Premises in a condition suitable for the receipt, storage and maintenance of dredge materials, as determined by the SCPA, its successors and assigns and representatives, including, but not limited to, the United States Army Corps of Engineers (the “**Corps**”) or dredging operation contractors, the SCPA shall not make any alterations, improvements, additions or modifications to the Licensed Premises without the prior, express, and written consent of the CITY, which consent the CITY may withhold in its sole discretion. If so approved, any alterations, improvements, additions and modifications

to the Licensed Premises by the SCPA shall be done at the SCPA's sole cost and expense in a good and workmanlike manner and shall conform to all applicable laws, rules and regulations of those governmental authorities having jurisdiction thereof.

8. Surrender Upon Termination: Unless the sale or conveyance of the Property to the SCPA is consummated on or before September 30, 2017, then, upon termination of the License, the SCPA shall surrender and deliver the Licensed Premises to the CITY. All structures, equipment and materials placed upon the Licensed Premises by the SCPA shall remain the property of the SCPA and may be removed by the SCPA at any time prior to or within thirty (30) days after termination of the License.

9. Restoration: Unless the sale or conveyance of the Property to the SCPA is consummated on or before September 30, 2017, then, upon termination of the License, the SCPA agrees to take any actions that are reasonably necessary to restore the Licensed Premises to the condition in which the Licensed Premises existed prior to the Effective Date; provided, however, nothing herein shall require SCPA to restore vegetation on the Licensed Premises or to reverse any land disturbing activities undertaken to prepare the Licensed Premises for receipt of spoil materials. The SCPA further agrees to take any actions which are reasonably necessary to repair any damage to the Licensed Premises resulting from the SCPA's use and occupation of the Licensed Premises. Notwithstanding anything herein to the contrary, the SCPA shall, at the SCPA's expense, remove all fixtures, business equipment, or other improvements and personal property placed in, on, or about the Licensed Premises by the SCPA if the same are not permanently attached to the Licensed Premises and the removal of such will not damage the Licensed Premises. The SCPA will, at its expense, promptly repair any damage caused by or arising out of the removal of any such fixtures, equipment, improvements or personal property.

10. Insurance: The SCPA shall require all contractors, vendors and other agencies performing work at or on the Licensed Premises to carry the appropriate insurance required for work within the Licensed Premises hereunder and all such policies shall name the CITY as an additional insured.

The SCPA at its own expense shall at all times during the License Period of this Agreement maintain and carry a comprehensive general liability insurance policy including contracted coverage in an amount not less than the statutory caps for liability of public bodies as established by S.C. Code Ann. § 15-78-10, et seq. (South Carolina Tort Claims Act), as the same may, from time to time, be amended. In the event the statutory caps are repealed or otherwise invalidated, the parties shall meet and determine a commercially reasonable amount of liability coverage for the SCPA to maintain.

11. Non-Disturbance: The CITY covenants that if the SCPA shall timely pay the License Fee and perform all the covenants and provisions of this Agreement to be performed by the SCPA (including without limitation the acquisition of all required permits and approvals for the SCPA's use of the Licensed Premises), then the CITY shall not interfere with the SCPA's use of the Licensed Premises during the Licensed Period.

12. CITY's Right of Entry: Upon no less than five (5) days' notice, the CITY shall, accompanied by the SCPA or representative of the SCPA, have access to the Licensed Premises,



including any building or structure that may at any time be on the Licensed Premises, at all reasonable times for the purposes of examining or inspecting the condition of the Licensed Premises in order to exercise any right or power reserved to the CITY under the terms and provisions of this Agreement.

13. Assignment or Sublicensing: The License granted hereby is personal to the SCPA and shall not be assigned, nor shall the SCPA sublicense or otherwise permit or suffer the occupancy of the Licensed Premises by any third party without the prior written consent of the CITY, which consent may be withheld in the CITY's sole and absolute discretion. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, SCPA Permittees (as defined herein) shall also have the right to enter upon, use and occupy the Licensed Premises for the purposes herein provided for the License Period, subject to the terms and conditions set forth in this Agreement. As used herein, the term "**SCPA Permittees**" means the SCPA and such agents, employees, contractors, subcontractors, vendors, other agencies and other designees as might be designated by the SCPA or the Corps from time to time to perform dredging activities and other work at or on the Licensed Premises.

14. Release: The SCPA does hereby release the CITY from any and all claims, damages, costs, and expenses, which the SCPA has or may have arising from or alleged to arise from the SCPA Permittees' use of, conduct of business on or activities on the Licensed Premises. The SCPA shall require any SCPA Permittee to release the CITY using similar language of release in any contract or agreement relating to the use of the Licensed Premises.

15. SCPA Default and Remedies: Upon the occurrence of any SCPA default, if the CITY determines, in its sole discretion, that such default is material, then the CITY may terminate this Agreement upon thirty (30) days written notice to the SCPA, after which the SCPA shall surrender the Licensed Premises to the CITY and, if the SCPA fails to do so, the CITY may, without prejudice to any other remedy which it may have, enter upon and take possession of the Licensed Premises and expel or remove the SCPA and any other person who may be occupying said Licensed Premises or any part thereof, with or without force, without being liable for prosecution or any claim of damages therefore. Without limiting the foregoing, the CITY shall have the right to pursue all available equitable remedies against the SCPA for breach of this Agreement, including but not limited to injunctive relief, specific performance, and ejection. The foregoing remedies shall be the exclusive remedies available to the CITY for a material default by the SCPA under this Agreement. Forbearance by the CITY to enforce one or more of the remedies herein provided upon a SCPA Default shall not be deemed or construed to constitute a waiver of such default.

16. CITY Default and Remedies: In light of the nominal consideration provided to the CITY for the License, the SCPA agrees to limit its remedies against the CITY arising from or alleged to arise from a material default or breach of this Agreement by the CITY to an action for specific performance and/or injunctive relief to enforce the SCPA's rights under this Agreement, or, with respect to a dispute over the proper interpretation of this Agreement or the SCPA's rights under this Agreement, an action for declaratory relief. The SCPA hereby waives any other remedies or claims for damages or other relief against the CITY arising from this Agreement or the CITY's material breach hereof. In no event shall the SCPA be entitled to monetary damages

or reimbursement of attorneys' fees and costs incurred by the SCPA in any action against the CITY.

17. Notices: All notices, demands and requests which may be given or which are required to be given by either party to the other under this Agreement, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when either: (i) delivered in person to the address set forth below for the party to whom the notice was given; (ii) three (3) business days after having been sent, by certified mail, return receipt requested, addressed to the intended recipient at the address specified below; or (iii) at noon of the business day next following after having been deposited into the custody of a nationally recognized overnight delivery service, addressed to such party at the address specified below. Any notice sent as required by this Section and refused by recipient shall be deemed delivered as of the date of such refusal. For purposes of this Section, the addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

If to CITY:

City of Charleston  
Attention: Real Estate Management  
2 George Street, Suite 2601  
Charleston, SC 29401

with a copy to:

City of Charleston  
Attention: Legal Department  
50 Broad Street  
Charleston, SC 29401

If to SCPA:

South Carolina State Ports Authority  
Attention: Stan Van Ostran, Senior Vice President  
176 Concord Street  
Charleston, SC 29401  
Fax #: (843) 577-8616

with a copy to:

Willoughby & Hoefer, P.A.  
Attention: Randy Lowell, SCPA General Counsel  
151 Meeting Street, Suite 325  
Charleston, SC 29401  
Fax #: (843) 619-4430

and with a copy to:

Nexsen Pruet, LLC  
Attention: George J. Bullwinkel, III, Esquire  
205 King Street, Suite 400  
Charleston, SC 29401  
Fax #: (843) 720-1777

Any counsel designated above or any replacement counsel which may be designated respectively by either party or such counsel by written notice to the other party is hereby authorized to give notices hereunder on behalf of its respective client.

18. Binding Effect: This Agreement and the covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties, their heirs, assigns, legal representatives, and other successors in interest.

19. Days: Dates: Unless other specified herein, all references to "day" or "days" in this Agreement shall mean a calendar day or calendar days. If any date set forth in this Agreement or computed pursuant to this Agreement falls on a Saturday, Sunday, or national holiday, such date shall be deemed automatically amended to be the first business day following such weekend day or holiday.

20. Governing Law: This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of South Carolina.

21. Severability: Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

22. Entire Agreement: This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the license of the Property by the SCPA and supersedes all prior agreements and understandings, oral, written or otherwise, relating to the License. No provision hereof can be changed orally, and no change or attempted waiver of any provision hereof will be binding unless in writing and signed by the party against whom the same is sought to be enforced.

23. Section Headings: The titles to the Sections and paragraphs of this Agreement are intended solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement. When appropriate, words of any gender shall mean and include the other genders, and singular shall mean and include the other plural, and vice versa.

24. Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE TO LICENSE AGREEMENT]

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals as of the Effective Date first written above.

WITNESSES:

CITY:

CITY OF CHARLESTON

\_\_\_\_\_  
Signature of Witness #1  
Print Name of Witness #1: \_\_\_\_\_

By: \_\_\_\_\_

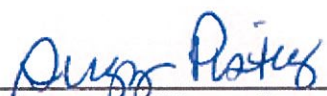
Name: John J. Tecklenburg

\_\_\_\_\_  
Signature of Witness #2  
Print Name of Witness #2: \_\_\_\_\_

Title: Mayor

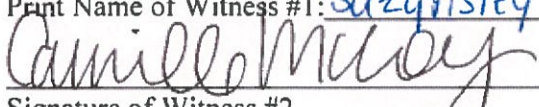
SCPA:

SOUTH CAROLINA STATE PORTS  
AUTHORITY

  
\_\_\_\_\_  
Signature of Witness #1  
Print Name of Witness #1: Suzy Pistey

By: 

Name: Stanley R. Van Ostran

  
\_\_\_\_\_  
Signature of Witness #2  
Print Name of Witness #2: Camille McCoy

Title: SR VP & CFO

b.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

**TO:** Real Estate Committee **DATE:** August 15, 2017

**FROM:** Frances Cantwell **DEPT:** BFRC

**ADDRESS:** Parcel EE, Phase 2

**TMS:** 277-00-00-003

**PROPERTY OWNER:** City of Charleston

**ACTION REQUEST:** Request approval for the Mayor to execute the Purchase and Sale Agreement between the City of Charleston and the South Carolina State Ports Authority of the property on Daniel Island known as Parcel EE, Phase 2 (45.976 acres) for \$1.5 million.

**ORDINANCE:** Is an ordinance required? Yes ☒ No ☐

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head		<input type="checkbox"/>
Legal Department	<u>Frances J. Cantwell</u>	<input type="checkbox"/>
Chief Financial Officer	<u>Amy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management	<u>Colleen Carducci</u>	<input checked="" type="checkbox"/>
		<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☒

If yes, was funding previously approved?\* Yes ☐ No ☐

\*If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

**\*Commercial Property and Community & Housing Development have an additional form.**

## COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: August 15, 2017

FROM: Frances Cantwell DEPT: BFRC

ADDRESS: Parcel EE, Phase 2

TMS: 277-00-00-003

PROPERTY OWNER: City of Charleston

ACTION REQUEST: Request approval for the Mayor to execute the Purchase and Sale Agreement between the City of Charleston and the South Carolina State Ports Authority of the property on Daniel Island known as Parcel EE, Phase 2 (45.976 acres) for \$1.5 million.

**ORDINANCE:** Is an ordinance required? Yes ☒ No ☐

**ACTION:** What action is being taken on the Property mentioned?

☐ **ACQUISITION** Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_

☐ **DONATION/TRANSFER**  
Donated By: \_\_\_\_\_

☐ **FORECLOSURE**  
Terms: \_\_\_\_\_

☐ **PURCHASE**  
Terms: \_\_\_\_\_

☐ **CONDEMNATION**  
Terms: \_\_\_\_\_

☐ **OTHER**  
Terms: \_\_\_\_\_

☒ **SALE** Seller (Property Owner) City of Charleston Purchaser South Carolina State Ports Authority

☐ **NON-PROFIT ORG, please name** \_\_\_\_\_  
Terms: \_\_\_\_\_

☒ **OTHER**  
Terms: \_\_\_\_\_

The property will be transferred by quitclaim deed. Closing will occur ten days after the Purchase and Sale Agreement is executed by the parties.

## COMMERCIAL REAL ESTATE FORM

☐ **EASEMENT** | Grantor (Property Owner) \_\_\_\_\_ Grantee \_\_\_\_\_

☐ **PERMANENT**  
Terms: \_\_\_\_\_

☐ **TEMPORARY**  
Terms: \_\_\_\_\_

☐ **LEASE** Lessor: \_\_\_\_\_ Lessee: \_\_\_\_\_

☐ **INITIAL**  
Terms: \_\_\_\_\_

☐ **RENEWAL**  
Terms: \_\_\_\_\_

☐ **AMENDMENT**  
Terms: \_\_\_\_\_

☐ **Improvement of Property**  
Owner: \_\_\_\_\_  
Terms: \_\_\_\_\_

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

**Results:** \_\_\_\_\_

Signature: [Signature]  
Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

**NEED:** Identify any critical time constraint(s).



Ratification  
Number \_\_\_\_\_

## A N O R D I N A N C E

AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY A PURCHASE AND SALE AGREEMENT WITH THE SOUTH CAROLINA STATE PORTS AUTHORITY PERTAINING TO LANDS OWNED BY THE CITY ON DANIEL ISLAND, MEASURING AND CONTAINING 45.976 ACRES, MORE OR LESS, AND DESIGNATED AS "PARCEL EE, PHASE 2" ON THAT CERTAIN PLAT BY SOUTHEASTERN SURVEYING, INC. ENTITLED "A SUBDIVISION PLAT OF A PORTION OF DANIEL ISLAND OWNED BY HARRY FRANK GUGGENHEIM FOUNDATION, DANIEL ISLAND DEVELOPMENT COMPANY AND THE CITY OF CHARLESTON LOCATED IN THE CITY OF CHARLESTON BERKELEY COUNTY, SOUTH CAROLINA" RECORDED IN THE BERKELEY COUNTY REGISTER OF DEEDS IN PLAT CABINET M, PAGES 309-312, TO INCLUDE THE AUTHORITY TO EXECUTE ANY AND ALL DEEDS OR OTHER DOCUMENTS AS MAY BE NECESSARY TO CONSUMMATE THE SALE OF THE PROPERTY SUBJECT TO THE PURCHASE AND SALE AGREEMENT.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute on behalf of the City a Purchase and Sale Agreement with the South Carolina State Ports Authority pertaining to lands owned by the City on Daniel Island measuring and containing 45.976 acres, more or less, and designated as "PARCEL EE, PHASE 2" on that certain plat by Southeastern Surveying, Inc. entitled "A SUBDIVISION PLAT OF A PORTION OF DANIEL ISLAND OWNED BY HARRY FRANK GUGGENHEIM FOUNDATION, DANIEL ISLAND DEVELOPMENT COMPANY AND THE CITY OF CHARLESTON LOCATED IN THE CITY OF CHARLESTON BERKELEY COUNTY, SOUTH CAROLINA", recorded in the Berkeley County Register of Deeds in Plat Cabinet M. Pages 309-312, a copy of said Purchase and Sale Agreement being attached to this Ordinance and incorporated herein by reference. The authority granted to the Mayor by this Ordinance includes the authority to execute and deliver any and all deeds or other



documents as may be necessary to consummate the sale of the property subject to the Purchase and Sale Agreement.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of \_\_\_\_\_  
in the Year of Our Lord, 20\_\_\_\_,  
and in the \_\_\_\_\_<sup>nd</sup> Year of the Independence of  
the United States of America

\_\_\_\_\_  
John J. Tecklenburg, Mayor

ATTEST: \_\_\_\_\_  
Vanessa Turner Maybank,  
Clerk of Council

## **PURCHASE AND SALE AGREEMENT**

This PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of the Effective Date (as defined herein) by and between THE CITY OF CHARLESTON, a South Carolina municipal corporation ("Seller"), and THE SOUTH CAROLINA STATE PORTS AUTHORITY, an instrumentality of the State of South Carolina ("Purchaser"). Seller and Purchaser are sometimes referred to collectively herein as the "Parties" and individually as a "Party." "Effective Date" means the date following the signature of the last Party to sign this Agreement.

In consideration of the mutual covenants herein contained, Seller and Purchaser agree as follows:

1. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller, the following described property (the "Property"):

ALL that certain piece, parcel or tract of land, situate, lying and being on Daniel Island, in the City of Charleston, Berkeley County, South Carolina, measuring and containing 45.976 acres, more or less, and designated as "PARCEL EE, PHASE 2" on that certain plat by Southeastern Surveying, Inc. entitled, "A SUBDIVISION PLAT OF A PORTION OF DANIEL ISLAND OWNED BY HARRY FRANK GUGGENHEIM FOUNDATION, DANIEL ISLAND DEVELOPMENT COMPANY AND THE CITY OF CHARLESTON, LOCATED IN THE CITY OF CHARLESTON, BERKELEY COUNTY, SOUTH CAROLINA," Sheets 1-4, dated January 3, 1997 with latest revision May 21, 1997 and recorded in the Berkeley County Register of Deeds Office in Plat Cabinet M, Pages 309 through 312 (the "Plat"), the said parcel having such size, shape, dimensions, buttings and boundings, more or less, as will by reference to the Plat more fully appear which Plat is incorporated herein by reference.

Being a portion of TMS # 277-00-00-003

2. Purchase Price. The purchase price (the "Purchase Price") for the Property shall be ONE MILLION FIVE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$1,500,000.00) and shall be paid by Purchaser to Seller at the Closing (as defined herein) in United States currency via wire transfer of good, available and collected U.S. funds to an account designated by Seller.

3. Title and Survey.

(a) Prior to Closing, Purchaser shall obtain a commitment (the "Title Commitment") for an owner's title insurance policy listing Purchaser as the proposed insured and the Purchase Price as the proposed policy amount. The Title Commitment shall be issued by a title insurance company selected by Purchaser (the "Title Company").

(b) Purchaser shall have until 5:00 p.m. (Eastern time) on the date which is (2) business days prior to Closing (the "Initial Title Review Deadline") to examine title and survey to the Property and to give written notice to Seller of any objections which Purchaser may have to same. Seller shall have the right, but not the obligation, at its election, within five (5) business days after receipt of written objections from Purchaser (such five (5) business day period being referred to herein as the "Seller's Response Period"), to provide Purchaser notice as to whether or not Seller intends to cure or otherwise remove any such objections at Seller's expense (such notice being the "Seller's Title Response") and, if necessary, the Closing Date shall be extended to the end of such five (5) business day time period; provided, however, Seller shall have no obligation to cure, remove or otherwise satisfy any such objections, except for Required Removal Exceptions (as defined in Section 3(f) below). In the event Seller refuses to cure or remove any of said Purchaser's objections, or fails to provide Seller's Title Response within Seller's Response Period (which such failure shall be deemed to be a Seller refusal to cure), then Seller shall not be in default under this Agreement (unless such objection is a Required

Removal Item), but Purchaser shall then have the option, which shall be exercised by written notice given to Seller within five (5) business days of the expiration of the Seller's Response Period, to either: (i) terminate this Agreement, in which event this Agreement shall be deemed canceled and become void and of no further effect, and neither party shall have any obligations of any nature to the other hereunder or by reason hereof (except that the provisions hereof that expressly survive such termination); or (ii) waive such objections (other than Required Removal Items, which Seller shall cure on or before Closing) and proceed toward the Closing without any abatement of the Purchase Price; in which case all such objections of Purchaser that Seller has refused to cure shall be waived by Purchaser (other than Required Removal Items). If Seller fails or refuses to remove or otherwise discharge any Required Removal Item on or before Closing, then Seller shall be in default under this Agreement and Purchaser shall be entitled to seek and pursue all rights and remedies afforded to Purchaser for such default pursuant to the terms of this Agreement, or, alternatively in such case, Purchaser may, in its sole discretion, proceed to Closing and satisfy any then-outstanding Required Removal Item from the proceeds payable to Seller at Closing. If Seller agrees in Seller's Title Response to cure any objection of Purchaser prior to Closing, and fails to do so, then Seller shall not be in default under this Agreement (unless such objection is a Required Removal Item), but Purchaser may then on or before the Closing Date either (x) waive such objections (other than Required Removal Items, which Seller shall cure on or before Closing) and proceed with Closing without any abatement of the Purchase Price; in which case all such objections of Purchaser that Seller has refused to cure shall be waived by Purchaser (other than Required Removal Items), or (y) terminate this Agreement, in which event this Agreement shall be deemed canceled and become void and of no further effect, and neither party shall have any obligations of any nature to the other hereunder or by reason hereof (except that the provisions hereof that expressly survive such termination).

(c) Purchaser's failure to deliver any such objection notice to Seller on or before the end of the Initial Title Review Deadline shall constitute Purchaser's irrevocable acceptance of the Title Commitment and the Survey (as defined below) and Purchaser shall be deemed to have unconditionally waived any right to object to any matters set forth therein; provided, however, notwithstanding the foregoing or anything else in this Agreement to the contrary, Purchaser may, at any time prior to Closing, notify Seller in writing of any objection to matters of title or survey first raised by the Title Company or the surveyor from and after the date of Purchaser's initial title examination or the Survey (as defined herein), as applicable, or not otherwise actually known to Purchaser prior to the expiration of the Initial Title Review Deadline. If Purchaser provides such a notice to Seller, Seller and Purchaser shall have the same rights and obligations with respect to such notice and objections as apply to the initial notice of objections given by Purchaser pursuant to the terms of Section 3(b), and the Closing shall be extended, if necessary, to permit the parties to exercise their respective rights as provided herein.

(d) Purchaser shall have the right (but not the obligation), at Purchaser's expense, to have a current survey of the Property (the "Survey") prepared by a surveyor registered in the State of South Carolina selected by Purchaser.

(e) Any title or survey exceptions that appear in (i) (a) Exhibit B to the deed of the Property (which deed includes other parcels not relevant to this Agreement) from Daniel Island Development Company, Inc. to the City of Charleston dated June 18, 1997 and recorded in the Berkeley County Register of Deeds Office in Deed Book 1092 at Pages 0292 through 0298, which is incorporated herein by reference, (b) the Title Commitment, or (c) on the Survey (other than Required Removal Items, which Seller shall be required to cure, and standard exceptions to be deleted from the final policy), and (ii) which are either not objected to by Purchaser, or waived hereunder by Purchaser, shall be deemed "Permitted Exceptions."

(f) Seller shall not be required to take or bring any action or proceeding or any other steps to remove any defect in or objection to title or survey or to fulfill any condition precedent to Purchaser's obligations under this Agreement or to expend any moneys therefor, nor shall Purchaser have any right of action against Seller therefor, at law or in equity, except that, notwithstanding the foregoing or anything else in this Agreement to the contrary, Seller shall, on or prior to the Closing, pay, discharge or remove of record or cause to be paid, discharged or removed of record at Seller's sole cost and expense all of the following items (collectively, "Required Removal Items"): (i) any and all real property taxes and

real property assessments which constitute a lien against or otherwise encumber title to the Property which would be delinquent if unpaid at Closing or are otherwise due and payable at Closing; and (ii) any and all mortgages, financing statements, security interests, judgment liens and mechanics liens encumbering the Property. Required Removal Items shall be cured and removed by Seller, at Seller's sole cost and expense, prior to Closing with or without objection by Purchaser and shall in no event be deemed Permitted Exceptions. Seller shall be permitted to satisfy Required Removal Items from the proceeds of the sale at the time of Closing.

4. Termination. If (i) this Agreement is terminated by Purchaser pursuant to its rights under this Agreement (including, without limitation, pursuant to Sections 3, 6 or 16 hereof), and (ii) Purchaser is not in default under this Agreement, then, upon such termination, neither party shall have any further obligations under this Agreement except with respect to the obligations, if any, that expressly survive termination as provided herein.

5. Representations and Warranties.

(a) To induce Purchaser to purchase the Property from Seller, Seller represents and warrants to Purchaser, which representation and warranty shall be deemed to be re-made as of Closing and shall survive Closing, as follows:

(i) Seller is a duly existing legal entity organized and existing under the laws of its State of organization and has the power and authority to enter into this Agreement and to consummate the transactions herein contemplated.

(ii) Neither the execution and delivery of this Agreement, nor compliance with the terms and conditions of this Agreement by Seller, nor the consummation of the sale, constitutes or will constitute a violation or breach of the organizational documents of Seller.

(iii) The execution and delivery of this Agreement shall be approved by the authorized representatives of Seller and no further corporate action shall be required on the part of Seller to consummate the transaction contemplated hereby.

(iv) The signatories of Seller executing this Agreement on behalf of Seller have all requisite authority to execute this Agreement, and this Agreement, as executed, is valid, legal and binding upon Seller.

(v) Seller is not a "foreign person", as defined in the Internal Revenue Code. At Closing, if requested, Seller shall provide to Purchaser an affidavit to that effect.

(b) To induce Seller to sell the Property to Purchaser, Purchaser represents and warrants to Seller, which representation and warranty shall be deemed to be re-made as of Closing and shall survive Closing, as follows:

(i) Purchaser is a duly existing legal entity organized and existing under the laws of its State of organization and has the power and authority to enter into this Agreement and to consummate the transactions herein contemplated.

(ii) Neither the execution and delivery of this Agreement, nor compliance with the terms and conditions of this Agreement by Purchaser, nor the consummation of the purchase, constitutes or will constitute a violation or breach of the organizational documents of Purchaser.

(iii) The execution and delivery of this Agreement shall be approved by the authorized representatives of Purchaser and no further corporate action shall be required on the part of Purchaser to consummate the transaction contemplated hereby.

(iv) The signatories of Purchaser executing this Agreement on behalf of Purchaser have all requisite authority to execute this Agreement, and this Agreement, as executed, is valid, legal and binding upon Purchaser.

(c) The provisions of this Section 5 shall survive Closing.

6. Additional Contingency. Purchaser intends to use the Property for the purpose of depositing and managing dredge materials ("Purchaser's Intended Use"). As a result, in addition to any other conditions set forth in this Agreement, Purchaser's obligation to close and purchase the Property shall be contingent upon the Purchaser being satisfied, in its sole discretion, of its ability to use the Property for the Purchaser's Intended Use (collectively, the "Additional Contingency"). The Additional Contingency is for the sole benefit of Purchaser and may only be waived in a writing signed by Purchaser. If the Additional Contingency is not satisfied or waived by Purchaser on or before the Closing Date, then Purchaser, at its option, may elect, in its sole discretion, to either: (i) terminate this Agreement, in which event this Agreement shall be deemed canceled and become void and of no further effect, and neither party shall have any obligations of any nature to the other hereunder or by reason hereof (except that the provisions hereof that expressly survive such termination); or (ii) waive such unsatisfied Additional Contingency and proceed toward the Closing without any abatement of the Purchase Price.

7. Development Agreement: The parties recognize that the Property is subject to the Development Agreement among The Harry Frank Guggenheim Foundation, Daniel Island Development Company, Inc. and the City of Charleston dated as of June 1, 1995, and recorded in the Berkeley County ROD Office in Book 681 at Page 300, as amended by the First Amendment to Development Agreement dated June 9, 1997, and recorded in said ROD Office in Book 1092 at Page 275, and as further amended by the Second Amendment to Development Agreement dated November 24, 1998, and recorded in said ROD Office in Book 1695 at Page 74, and as further amended by the Third Amendment to Development Agreement dated March 8, 2000, and recorded in said ROD Office in Book 1931 at Page 187, and as further amended by the Fourth Amendment to Development Agreement dated September 27, 2016, and recorded in said ROD Office in Book 2307 at Page 275, and re-recorded in Book 2376 at Page 336, and any subsequent amendments thereto (the "Development Agreement"). Purchaser shall have the right to seek amendments to the Development Agreement and/or a rezoning of the Property in accordance with applicable ordinances and agreements to facilitate Purchaser's Intended Use; provided, however, notwithstanding the foregoing or anything else in this Agreement to the contrary, and unless otherwise agreed to in writing by Seller or a duly-approved Ordinance approved by Seller, Seller shall not be obligated to approve or otherwise consent to any such rezoning or amendments.

8. Access. Notwithstanding any other provision of this Agreement, the Deed shall be subject to the following permitted exception regarding access to the Property: "Grantor shall not have any right of access to the Property from any other property of the Grantor. Grantee shall exclusively access the Property from the Grantee's adjoining properties or from the Wando River."

9. Closing. The closing of the purchase and sale transaction contemplated by this Agreement (said closing, including any extension(s) thereof as herein provided, being referred to as the "Closing") shall be held at the offices of Purchaser's attorney in Charleston, South Carolina, on or before 2:00 p.m. (Eastern Time) on or before the date which is ten (10) business days after the Effective Date of this Agreement (said Closing date, including any extension(s) thereof as herein provided, being referred to as the "Closing Date"), TIME BEING OF THE ESSENCE.

10. Possession. To the extent the Purchaser is not already in possession of the Property under the License Agreement between Purchaser and Seller dated August \_\_\_\_, 2017 (the "License Agreement"), possession of the Property shall be delivered to Purchaser at the Closing, subject only to the Permitted Exceptions.

11. Prorations. If the Purchaser is in possession of the Property under the License Agreement prior to the month in which Closing occurs, then all rents, income, utilities and all other operating income and expenses (the "Income and Expenses") with respect to the Property, if any, for the month in which the

Closing occurs shall be the sole responsibility of the Purchaser. If the Purchaser is not in possession of the Property under the License Agreement prior to the month in which Closing occurs, then all Income and Expenses shall be prorated as of the earlier of (i) the date on which the Purchaser takes possession of the Property; or (ii) the Closing Date. Subsequent to the Closing, if any Income and Expenses are actually paid or received, Purchaser and Seller agree to make appropriate adjustments of Income and Expenses after the Closing. Real estate and personal property taxes and other assessments with respect to the Property for the year in which the Closing occurs shall be prorated as of the earlier of (i) the date on which the Purchaser takes possession of the Property; or (ii) the Closing Date. In the event of any special assessments that are levied against the Property in the year of the Closing, such special assessments shall be allocated as follows: (a) Seller shall pay all special assessments related to improvements which have been substantially completed on or before the earlier of (i) the date on which the Purchaser takes possession of the Property; or (ii) the Closing Date; and (b) Purchaser shall pay all special assessments related to improvements which have not been substantially completed on or before the earlier of (i) the date on which the Purchaser takes possession of the Property; or (ii) the Closing Date. The agreements of Seller and Purchaser set forth in this Section shall survive the Closing. Notwithstanding the foregoing or anything else in this Agreement to the contrary, any rollback taxes assessed against the Property under the rollback provisions of Section 12-43-220(d)(4) of the Code of Laws of South Carolina 1976, as amended, shall be the sole responsibility of Purchaser and shall not be prorated.

12. Closing Costs. Except as otherwise expressly provided herein, Seller shall pay, on the Closing Date, all of the cost of the preparation of the Deed (as defined herein) and customary Seller affidavits and certifications, and any deed transfer taxes or deed stamps. Purchaser shall pay, on the Closing Date, the cost of any title insurance policies or commitments, the cost of a title search or abstract of the Property, all recording costs, the cost of any inspections and/or surveys, and the Purchaser's loan closing costs and fees, if any. Except as otherwise provided herein, each party shall pay its own attorneys' fees.

13. Seller's Obligations at the Closing. At the Closing, Seller shall deliver to Purchaser each of the following documents:

(a) Deed. A Quitclaim Deed (the "Deed"), in a form mutually agreed upon by Purchaser and Seller, executed by Seller conveying fee simple absolute title to the entire Property to Purchaser subject to no exceptions other than the Permitted Exceptions.

(b) Foreign Person. An affidavit of Seller certifying that Seller is not a "foreign person," as defined in the Federal Foreign Investment in Real Property Tax Act of 1980, and the 1984 Tax Reform Act, as amended.

(c) Owner's Affidavit. An executed affidavit or other document acceptable to Seller and the Title Company in issuing the Owner's Policy without exception for possible lien claims of mechanics, laborers and materialmen or for parties in possession, as applicable; provided, however, any such affidavit or other document shall exclude (and Seller shall not indemnify Purchaser or the Title Company against) any liens, encumbrances or title exceptions created by Purchaser or any other person or entity (other than those unilaterally created by the Seller or those arising from the unilateral acts or omissions of Seller) or otherwise arising by reason of acts of Purchaser or any other person or entity (other than those unilaterally created by Seller or those arising from the unilateral acts or omissions of Seller).

(d) Withholding Tax. An affidavit with respect to the withholding tax as required by the State.

(e) Mortgage Payoff. Seller shall deliver to Purchaser's attorney any information necessary for Purchaser's attorney to obtain a payoff letter from any mortgagee of record. Seller understands and agrees that the closing proceeds will be applied to terminate any mortgage or record prior to any disbursement being made to Seller.

(f) Closing Statement. A closing statement setting forth the allocation of closing costs, purchase proceeds, etc.

(g) Evidence of Authority. If the seller is a legal entity, such consents and authorizations as Purchaser may reasonably deem necessary to evidence authorization of Seller for the sale of the Property, the execution and delivery of any documents required in connection with Closing and the taking of all action to be taken by the Seller in connection with Closing.

(h) Other Documentation. Such other documents as may be reasonable and necessary in the opinion of the Purchaser or its counsel to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Agreement.

14. Purchaser's Obligations at the Closing. At the Closing, Purchaser shall deliver to Seller the following:

(a) Purchase Price. The balance of the Purchase Price by wire transfer of immediately available U.S. funds.

(b) Closing Statement. A closing statement setting forth the allocation of closing costs, purchase proceeds, etc.

(c) Evidence of Authority. If the Purchaser (or its assignee) is a legal entity, such consents and authorizations as Seller may reasonably deem necessary to evidence authorization of Purchaser for the purchase of the Property, the execution and delivery of any documents required in connection with Closing and the taking of all action to be taken by the Purchaser in connection with Closing.

(d) Other Documentation. Such other documents as may be reasonable and necessary in the opinion of the Seller or its counsel to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Agreement.

15. Conditions Precedent to Purchaser's Obligations. Purchaser's obligations at Closing (including, but not limited to, the disbursement of proceeds and documents) are subject to the issuance of a title commitment "marked down" through Closing, subject only to the Permitted Exceptions.

16. Condemnation. If, prior to the Closing, action is initiated to take any of the Property by eminent domain proceedings or by deed in lieu thereof, Purchaser may either (a) terminate this Agreement, or (b) consummate the Closing, in which latter event the award of the condemning authority shall be assigned to Purchaser at the Closing.

17. Default. If any party breaches this Agreement, then the non-breaching party shall have the right to seek and pursue any and all rights and remedies available at law and/or in equity. Each Party (the "Non-Defaulting Party") hereby agrees that prior to its exercise of any rights or remedies as a result of any default or alleged default by the other Party (the "Defaulting Party"), the Non-Defaulting Party will first deliver written notice of said default to the Defaulting Party, and if the Defaulting Party so elects, the Defaulting Party shall have the opportunity, but not the obligation, to cure such default within ten (10) days after the Defaulting Party's receipt of such notice, and, if necessary, the Closing Date shall be extended to the end of such cure period.

18. Notices: All notices, demands and requests which may be given or which are required to be given by either party to the other under this Agreement, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when either: (i) delivered in person to the address set forth below for the party to whom the notice was given; (ii) three (3) business days after having been sent, by certified mail, return receipt requested, addressed to the intended recipient at the address specified below; or (iii) at noon of the business day next following after having been deposited into the custody of a nationally recognized overnight delivery service, addressed to such party at the address specified below. Notwithstanding the foregoing, any notices, responses, and objections permitted under Section 3(b) or 6 of this Agreement shall be in writing and shall be deemed effective immediately if sent during regular business hours or at 8:00 a.m. local time on the next business day following an after-hours, weekend or holiday notice sent by electronic mail, provided that receipt for

such electronic mail is verified by the sender. Any notice sent as required by this Section and refused by recipient shall be deemed delivered as of the date of such refusal. For purposes of this Section, the addresses and electronic mail addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

If to Seller:

City of Charleston  
Attention: Real Estate Management  
2 George Street, Suite 2601  
Charleston, SC 29401  
carduccic@charleston-sc.gov

with a copy to:

City of Charleston  
Attention: Legal Department  
50 Broad Street  
Charleston, SC 29401  
cantwellf@charleston-sc.gov and  
mcqueeneyd@charleston-sc.gov

If to Purchaser:

South Carolina State Ports Authority  
Attention: Stan Van Ostran, Senior Vice President  
176 Concord Street  
Charleston, SC 29401

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with a copy to:

Willoughby & Hoefer, P.A.  
Attention: Randy Lowell, SCPA General Counsel  
151 Meeting Street, Suite 325  
Charleston, SC 29401  
RLowell@Willoughbyhoefer.com  
and with a copy to:

Nexsen Pruet, LLC  
Attention: George J. Bullwinkel, III, Esquire  
205 King Street, Suite 400  
Charleston, SC 29401  
gbullwinkel@nexsenpruet.com

Any counsel designated above or any replacement counsel which may be designated respectively by either party or such counsel by written notice to the other party is hereby authorized to give notices hereunder on behalf of its respective client.

19. Real Estate Commissions. Seller represents and warrants to Purchaser that Seller has not dealt with any broker, consultant, finder or like agent who might be entitled to a commission or compensation on account of introducing the parties hereto, the negotiation or execution of this Agreement or the closing of the transactions contemplated hereby. Likewise, Purchaser represents and warrants to Seller that Purchaser has not dealt with any broker, consultant, finder or like agent who might be entitled to a commission or compensation on account of introducing the parties hereto, the negotiation or



execution of this Agreement or the closing of the transactions contemplated hereby.

20. Successors and Assigns; Assignment. This Agreement shall bind and inure to the benefit of Seller and Purchaser and their respective successors and assigns. No Party to this Agreement shall assign this Agreement (and/or its rights and/or obligations under this Agreement) without prior written consent of the other Parties.

21. Attorneys' Fees. In the event it becomes necessary for either Party hereto to file suit to enforce this Agreement or any provision contained herein, the Party prevailing in such suit shall be entitled to recover, in addition to all other remedies as provided herein, reasonable attorneys' fees, paralegal fees and cost incurred in such suit at trial, appellate, bankruptcy and/or administrative proceedings.

22. Future Operations; Condition of Property. Other than the License Agreement, after the Effective Date, Seller shall not enter into any leases, easements, restrictive covenants or other documents directly covering the Property without the prior written consent of the Purchaser.

23. Miscellaneous. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute the same instrument, and it shall not be necessary to produce or account for more than one such counterpart in making proof of this Agreement. All exhibits referenced in this Agreement are incorporated into this Agreement and made a part hereof. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement. This Agreement shall be governed by the laws of the State of South Carolina. All of the parties to this Agreement have participated freely in the negotiation and preparation hereof; accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement. This Agreement embodies the entire agreement between the parties relative to the sale of the Property by Seller to Purchaser, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the sale of the Property by Seller to Purchaser, which are not expressly set forth herein. This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby. TIME IS OF THE ESSENCE of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the State of South Carolina, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday. Unless otherwise specified, all references in this Agreement to "day" or "days" shall mean a calendar day or calendar days. The term "business day" as used herein shall mean any day other than a Saturday, Sunday or legal holiday under the laws of the United States or the State of South Carolina, and the term "business hours" as used herein shall mean any time between 8:00 a.m. (Eastern time) and 5:00 p.m. (Eastern time) on a business day.

24. "AS-IS" SALE OF PROPERTY. Except as is expressly set forth in this Agreement or the Closing documents to the contrary, Purchaser is expressly purchasing the Property in its existing condition "AS IS, WHERE IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions and defects, and, except as is expressly set forth in this Agreement or the Closing documents to the contrary, Seller has no obligation to determine or correct any such facts, circumstances, conditions or defects or to compensate Purchaser for same. Without limiting the generality of the foregoing, except as otherwise set forth herein (including the representations and warranties in Section 5(a) above), Purchaser acknowledges that Seller has made no representations, warranties or covenants as to the compliance of the Property with any federal, state, municipal or local statutes, laws, rules, regulations or ordinances, including, without limitation, those pertaining to construction, rent control, building and health codes, land use (or permits issued in connection therewith), zoning, lead paint, urea formaldehyde foam insulation, asbestos, hazardous or toxic wastes or substances, pollutants, contaminants or other environmental matters. Except as otherwise set forth herein (including the representations and warranties in Section 5(a) above), Seller shall not be liable or bound in any way for any verbal or written statements, representations,

or information pertaining to the Property furnished by any agent or employee of Seller, or any other person. It is understood and agreed that all prior and contemporaneous representations, statements, understandings and agreements, oral or written, between the parties relating to the sale of the Property by Seller to Purchaser are merged in this Agreement, which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying on any statement or representation or warranty not embodied in this Agreement made by the other. The provisions of this Section 24 shall survive the Closing or earlier termination of this Agreement or the Closing Date and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

[Remainder of page intentionally blank.  
Signatures on following page.]

[SIGNATURE PAGE TO PURCHASE AND SALE AGREEMENT]

For good and valuable consideration, the parties hereto have caused this Agreement to be executed under seal by persons duly empowered to bind the parties to perform their respective obligations hereunder the day and year set forth below their respective signatures.

SELLER:

CITY OF CHARLESTON

\_\_\_\_\_  
Signature of Witness #1  
Print Name of Witness #1: \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness #2  
Print Name of Witness #2: \_\_\_\_\_

By: \_\_\_\_\_

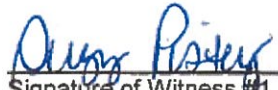
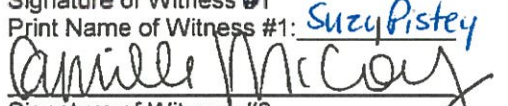
Name: John J. Tecklenburg

Title: Mayor

Date Signed by Seller: \_\_\_\_\_, 2017

PURCHASER:

SOUTH CAROLINA STATE PORTS AUTHORITY

  
\_\_\_\_\_  
Signature of Witness #1  
Print Name of Witness #1: Suzy Pistey  
  
\_\_\_\_\_  
Signature of Witness #2  
Print Name of Witness #2: Camille McCoy

By: 

Name: Stanley R. Van Ostrande

Title: Sr. VP & CFO

Date Signed by Purchaser: 8-8, 2017

C.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Real Estate Committee DATE: August 15, 2017

FROM: Frances Cantwell DEPT: BFRC

ADDRESS: Magnolia TIF District

TMS: multiple

PROPERTY OWNER: \_\_\_\_\_

**ACTION REQUEST:** Request approval for the Mayor to execute the Amended and Restated Public Improvements Infrastructure Agreement governing the expenditure of TIF funds for public infrastructure improvements in the Magnolia development. The agreement requires the developer, Ashley River Investors, LLC, to construct the City's public service facility, whereupon the 99 year lease the City has on Milford Street facility can be terminated.

**ORDINANCE:** Is an ordinance required? Yes ☒ No ☐

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<u>Signature</u>	<u>Attachments</u>
Department Head	_____	<input type="checkbox"/>
Legal Department	<u>Frances J. Cantwell</u>	<input checked="" type="checkbox"/>
Chief Financial Officer	<u>Jimmy Whelan</u>	<input type="checkbox"/>
Director Real Estate Management	<u>Colleen Carducci</u>	<input checked="" type="checkbox"/>
_____	_____	<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☒

If yes, was funding previously approved?\* Yes ☐ No ☐

\*If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

\*Commercial Property and Community & Housing Development have an additional form.

## COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: August 15, 2017

FROM: Frances Cantwell DEPT: BFRC

ADDRESS: Magnolia TIF District

TMS: multiple

PROPERTY OWNER: multiple

Request approval for the Mayor to execute the Amended and Restated Public Improvements Infrastructure Agreement governing the expenditure of TIF funds for public infrastructure improvements in the Magnolia development. The agreement requires the developer, Ashley River Investors, LLC, to construct the City's public service facility, whereupon the 99 year lease the City has on Milford Street facility can be terminated.

ACTION REQUEST:

**ORDINANCE:** Is an ordinance required? Yes ☒ No ☐

**ACTION:** What action is being taken on the Property mentioned?

<input type="checkbox"/>	<b>ACQUISITION</b>	Seller (Property Owner)	Purchaser
<input type="checkbox"/>	<b>DONATION/TRANSFER</b>	Donated By: _____	
<input type="checkbox"/>	<b>FORECLOSURE</b>	Terms: _____	
<input type="checkbox"/>	<b>PURCHASE</b>	Terms: _____	
<input type="checkbox"/>	<b>CONDEMNATION</b>	Terms: _____	
<input type="checkbox"/>	<b>OTHER</b>	Terms: _____	

<input type="checkbox"/>	<b>SALE</b>	Seller (Property Owner)	Purchaser
<input type="checkbox"/>	<b>NON-PROFIT ORG, please name</b>	Terms: _____	
<input type="checkbox"/>	<b>OTHER</b>	Terms: _____	

## COMMERCIAL REAL ESTATE FORM

☐ **EASEMENT**      Grantor (Property Owner) \_\_\_\_\_ Grantee \_\_\_\_\_

☐ **PERMANENT**  
Terms: \_\_\_\_\_

☐ **TEMPORARY**  
Terms: \_\_\_\_\_

☐ **LEASE**      Lessor: \_\_\_\_\_ Lessee: \_\_\_\_\_

☐ **INITIAL**  
Terms: \_\_\_\_\_

☐ **RENEWAL**  
Terms: \_\_\_\_\_

☐ **AMENDMENT**  
Terms: \_\_\_\_\_

☒ **Improvement of Property**

Owner: City of Charleston

Terms: The amendment requires the developer to give the City 3 years advance notice of termination of the Milford Street lease. If the new facility is not on line at the end of the 3 year notice, the lease continues until 60 days after the new facility has received a Certificate of Occupancy. The amended agreement also updates the name and addresses of the parties who are required to get notices under the agreement.

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

Results: \_\_\_\_\_

Signature: *William Carducci*  
Director Real Estate Management

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.



Ratification  
Number \_\_\_\_\_

## A N O R D I N A N C E

AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY AN AMENDED AND RESTATED PUBLIC INFRASTRUCTURE IMPROVEMENTS AGREEMENT WITH ASHLEY RIVER INVESTORS, LLC PERTAINING TO THE CONSTRUCTION AND FUNDING OF PUBLIC INFRASTRUCTURE IMPROVEMENTS IN THE CHARLESTON NECK REDEVELOPMENT PROJECT AREA WITH TAX INCREMENT FUND BOND PROCEEDS AND TAX INCREMENT FUND REVENUES.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute on behalf of the City an Amended and Restated Public Infrastructure Improvements Agreement with Ashley River Investors, LLC, which Agreement pertains to the construction and funding of Public Infrastructure Improvements, as set out in said Agreement, in the Charleston Neck Redevelopment Project Area with Tax Increment Fund Bond Proceeds and Tax Increment Fund Revenues, a copy of said Amended and Restated Public Infrastructure Improvements Agreement being attached hereto and incorporated herein by reference.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of  
\_\_\_\_\_ In the Year of Our Lord, 2017, in  
the \_\_\_\_\_ Year of the Independence of the  
United States of America.

\_\_\_\_\_  
John J. Tecklenburg, Mayor

ATTEST:

\_\_\_\_\_  
Vanessa Turner Maybank,  
Clerk of Council

AMENDED AND RESTATED PUBLIC INFRASTRUCTURE IMPROVEMENTS  
AGREEMENT

THIS PUBLIC INFRASTRUCTURE IMPROVEMENTS AGREEMENT (this "**Agreement**") is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2015 (the "**Effective Date**"), by and between the CITY OF CHARLESTON, SOUTH CAROLINA, a South Carolina municipal corporation (the "**City**"), and ASHLEY RIVER INVESTORS, LLC, a South Carolina limited liability company, its successors and assigns (collectively, the "**Developer**"). The City and the Developer are sometimes referred to individually as a "**Party**" and together as the "**Parties**" as the context may require.

RECITALS

1. This Agreement replaces and supersedes in full that certain Development and Public Infrastructure Improvements Purchase Agreement effective as of the 1st day of December, 2007 by and between the City and the Present Owner (as defined below), the Present Owner's rights under which terminated pursuant to Agreement dated April 20, 2011 between the City and the Present Owner.

2. Pursuant to the "Tax Increment Financing Law" codified at Title 31, Chapter 6, Code of Laws of South Carolina, 1976 as amended (the "**TIF Act**") the City is authorized to establish redevelopment project areas, issue obligations to carry out a redevelopment project and pay redevelopment project costs, each as defined in the TIF Act. The City Council of the City ("**City Council**") by ordinance (the "**TIF Ordinance**") adopted December 21, 2004 established the Charleston Neck Redevelopment Project Area (the "**TIF District**"). The Redevelopment Plan attached to the TIF Ordinance describes the expectation that certain public improvements will be funded by TIF Revenues (as defined in the MOU defined below) or will be financed by borrowings secured by a pledge of revenues generated by the TIF District and the Assessments (as hereinafter defined) generated in the Improvement District (as hereinafter defined).

3. Ashley I, LLC and Ashley II of Charleston, LLC (collectively the "**Present Owner**") owns, in fee simple approximately 90% of the 210.52 acres of property, which 210.52 acres of property is more particularly described in Exhibit A attached hereto and made a part hereof (the "**Property**"). The entirety of the Property is situated within the TIF District. The portion of the Property owned by Present Owner is herein referred to as the "Present Owner's Property". Pursuant to the Municipal Improvements Acts of 1999, Title 5, Chapter 37 of the Code of Laws of South Carolina, 1976 as amended (the "**Municipal Improvements Act**") the City has pursuant to an ordinance enacted by the City Council on July 17, 2007, (the "**MID Ordinance**") designated the Property as a Municipal Improvement District referred to as the "Magnolia Improvement District" (the "**Improvement District**").

4. The City Council amended the TIF Ordinance by an ordinance approved on July 8, 2014 to among other things extend the term of the TIF District.

5. Magnolia/ARC Lender, LLC ("**Lender**") holds a note secured by, inter alia, the Present Owner's Property. The note is in default and Lender may foreclose upon or otherwise acquire all or portions of the Present Owner's Property. It is the Developer's intention to acquire from Lender or the Present Owner from time to time all or portions of the Present Owner's Property.

6. After acquisition of all or portion of the Present Owner's Property, the Developer proposes to develop all or portions thereof in multiple phases (or convey portions of such Property to third parties for development consistent with and subject to this Agreement). In anticipation of such redevelopment, the City and Developer entered into a Memorandum of Understanding and



Agreement (“MOU”) a copy of which is attached as Exhibit E which was approved by Resolution of the City Council dated July 8, 2014 and amended by ordinance adopted August 18, 2015.

7. In conjunction with the development of all or portions of the Property, subject to the terms and conditions hereof, the Developer will undertake certain improvements, which improvements are set forth on Exhibit B attached hereto and made a part hereof (collectively the “**Public Infrastructure Projects**” and individually as the context may require a “**Public Infrastructure Project**”). The TIF Ordinance and the MID Ordinance describe revenue bonds to be issued to defray the cost of a portion of such Public Infrastructure Project (“**TIF Bonds**” and “**MID Bonds**,” respectively). The TIF Ordinance and the MID Ordinance, as currently amended and to be amended in the future, describe certain public infrastructure improvements to be undertaken within the Improvement District and therefore within the TIF District.

8. The parties intend that certain of the costs to be incurred by Developer (or Developer Affiliate) in connection with the remediation, engineering, design, permitting, construction (including construction management fees as set forth in Exhibit B) and equipping of the Public Infrastructure Projects (collectively the “**Public Infrastructure Costs**”), which shall include all types of costs eligible for reimbursement under applicable law, will be funded from the proceeds available from TIF Bonds (“**TIF Bonds Proceeds**” as hereinafter defined) and Excess TIF Revenues (as defined in the MOU). In addition, funds advanced by Developer for Public Infrastructure Costs will be reimbursed from the TIF Bonds and Excess TIF Revenues. The estimated Public Infrastructure Costs are set forth on Exhibit B attached hereto.

9. The City is willing to facilitate the reimbursement described above to the Developer and/or Developer Affiliate from the TIF Bond Proceeds and Excess TIF Revenues for such Public Infrastructure Costs and to disburse TIF Bond Proceeds and Excess TIF Revenues on the terms and conditions hereinafter set forth.

10. In order for Developer to successfully develop the Property and in order for the City to successfully issue the TIF Bonds, in accordance with the Improvement Plan (as defined herein) and the MOU, it is necessary that the TIF Ordinance, the MID Ordinance and related ordinances heretofore passed by the City Council be amended in accordance with the requirements hereinafter set forth; and Developer’s and the City’s obligations set forth in this Agreement are conditioned upon such TIF Bonds being issued and such modifications being accomplished by properly adopted City Council ordinances.

11. In connection with the City’s issuance of TIF Bonds, it is necessary that the City Council by ordinance (the “**Bond Ordinance**”) approve such TIF Bonds and it is further necessary that a successful financing of the TIF Bonds be accomplished.

12. One or more of the TIF Bonds series may be secured, at Developer’s election, by the Assessments.

13. The parties intend to enter into one or more supplemental amendments or addendums to this Agreement in connection with the issuance of TIF Bonds.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I - RECITALS

Section 1.1 The foregoing Recitals are incorporated into and made a part of this Agreement.

## ARTICLE II - DEFINITIONS

**Section 2.1 Defined Terms.** In addition to the terms defined in the Recitals and elsewhere herein, the following terms shall have the meanings specified herein:

"Applicable Requirements" shall mean, collectively, all requirements contained in this Agreement, the Indenture, the Construction Documents, all City standards and requirements for publicly dedicated infrastructure improvements, and all applicable and duly enacted federal, state, county and City laws, codes, ordinances, rules, regulations, approvals, and permits (all as may have been modified by any documents applicable to the Property, including without limitation any subsequent Development Agreement executed pursuant to §6-31-160 of the Code of Laws of South Carolina, as amended). The Applicable Requirements shall not include the City procurement code.

"Approved Reviewing Consultant" means an engineer, geotechnical specialist, or other type of consultant ("Reviewing Consultant") whose services are determined by one of the parties to be useful in connection with technical reviews associated with City action on Development Permits, whose qualifications meet the City's requirements for such services and who has been approved by the City. The Developer shall have the option, from time to time, to submit a list of qualified Reviewing Consultants to be pre-approved by City. The Approved Reviewing Consultant, when retained, will perform functions otherwise required to be performed by the City, including reviewing designs and plans, inspecting construction and determining satisfaction of project requirements; however, all final approvals shall be made by the City. The City shall approve those Reviewing Consultants who meet the City's qualification requirements. The costs of the Approved Reviewing Consultant shall be included within Public Infrastructure Cost.

"Assessments" means those assessments to be levied against tracts and lots within the Improvement District for the purposes provided for in the Municipal Improvements Act of 1999, Title 5, Chapter 37 of the Code of Laws of South Carolina, as amended, specifically Section 5-37-30 as established by the MID Ordinance, as modified pursuant to §3.1 herein.

"City Project Manager" shall mean the individual appointed by the City who is responsible for coordinating the City's obligations and rights under this Agreement and who is responsible for coordinating all City responses to Developer's applications for Development Permits, for assisting Developer with the application and review process for Development Permits and for obtaining timely and unified City responses to Developer's requests for approvals, permits and consents. The City Project Manager shall be a City employee and Developer shall be entitled to rely on the authority of the City Project Manager to act on behalf of the City in obtaining such approvals, permits and consents unless the City Ordinances explicitly provide otherwise. The costs of the City Project Manager shall be included as a Public Infrastructure Cost and shall not exceed \$150,000 annually and shall not exceed 1% in the aggregate of the total approved budget established pursuant to Section 5.7. All of the City Project Manager's time shall be dedicated to the redevelopment of the Improvement District, unless the parties to this Agreement agree otherwise, in which case the costs shall be prorated based upon an allocation formula agreed to between the parties.

"Construction Documents" shall mean, collectively, the Plans, and all construction budgets, engineering reports, Design Professional contracts, construction management agreements, contracts for environmental services and remediation, supply contracts, construction contracts, project schedules, and other documentation pertaining to the design, equipping, and construction of the Public Infrastructure Projects (but not including any construction financing documents with third party construction loan lenders, if any), each as may be amended from time to time in accordance herewith.

"Construction Fund" shall mean a fund established into which TIF Bond Proceeds and Excess TIF Revenues are deposited in order to reimburse Developer for and/or pay directly Public Infrastructure Costs.

"Design Professional" means the properly licensed architects and/or engineers engaged by the Developer for a Public Infrastructure Project as further described in Section 5.13 of this Agreement.

"Developer Affiliate" shall mean any entity owned in whole or part by Developer or by any entity that controls, is controlled by, or is under common control with Developer.

"Development Permits" includes a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, certificate of occupancy, municipal separate storm sewer system (MS4) permit and/or any other official action of the City having the effect of permitting all or portions of the Project or use of all or portions of the property.

"Disbursement Request" has the meaning set forth in Section 6.2 of this Agreement.

"Indenture" shall mean the master trust indenture, if any, as may be modified or supplemented by one or more supplemental indentures.

"Improvement Plan" shall mean that certain Improvement Plan (as amended from time to time) for the Improvement District, a copy of which is attached as **Exhibit C** and made a part of this Agreement.

"Plans" shall mean the final plans and specifications, including all drawings and design calculations, prepared by a Design Professional and approved by the City in accordance with the procedures set forth in Section 8.2 with respect to a Public Infrastructure Project or portion thereof.

"Project Schedule" has the meaning set forth in Section 5.5 of this Agreement.

"Reimbursement Resolution" shall mean the City of Charleston Resolution Number 2014-08 dated July 15, 2014, as amended.

### **ARTICLE III - CONDITIONS TO THE DEVELOPER'S OBLIGATIONS HEREUNDER**

**Section 3.1** **Modification of TIF Ordinance, MID Ordinance and Related Ordinances and Documents.** The respective obligations of the Developer and City hereunder are conditioned upon, among other conditions set forth in this Agreement, the following:

- (i) Adoption by City Council of an ordinance modifying the Improvement Plan as agreed upon between the City and Developer;
- (ii) Adoption by the City Council of an ordinance eliminating the MID Bonds and clarifying that the purpose of the Assessments is to act only as security for the TIF Bonds at Developer's election and for no other purpose;
- (iii) Agreement of Developer and City that, with respect to future issuance of TIF Bonds, at such time as TIF Revenues exceed 102% of the current bond year's principal and interest payment such excess shall transfer to the Construction Fund for reimbursement of the Developer of Project Infrastructure Costs (such agreement being subject to the obligations imposed by purchaser of such TIF Bonds);
- (iv) The City's commitment to issue subsequent series of TIF Bonds in order to finance Public Infrastructure Costs, recognizing that the principal amount of such future issuance of TIF Bonds is dependent upon such factors as the income stream securing such borrowings as well as interest rates then prevailing;
- (v) The Developer recommends to the City the assessment method for calculating the Assessments among the various tracts and lots within the Improvement District and an ordinance is adopted by the City amending those provision of the MID Ordinance to include this assessment methodology;
- (vi) Developer's acquisition of title to (or a valid easement or other right to construct upon) the portion or portions of the Property on which a Public Infrastructure Project is to be located.
- (vii) Adoption of an amendment to the Reimbursement Resolution clarifying that Developer may be reimbursed from Excess TIF Revenues and that the amount of approved Public Infrastructure Costs is the amount set forth on the attached **Exhibit B** and the maximum amount of TIF Bonds to be issued is \$149 million.

## **ARTICLE IV**

**Section 4.1** In connection with the issuance of TIF Bonds, Developer and the City shall have the right, upon mutual agreement, to designate additional Public Infrastructure Projects (the existing Public Infrastructure Projects listed on **Exhibit B**) in accordance with the Improvement Plan and shall enter into an amendment or addendum hereto or a separate agreement in form and substance equivalent hereto; provided however that TIF Bond Proceeds and Excess TIF Revenues shall first be applied to Public Infrastructure Projects listed on **Exhibit B**. Provided that Developer is not in default hereunder or with respect to any Assessments, the City shall proceed with the issuance of such subsequent series of TIF Bonds contemplated under the MOU for the continued

development of the Property in accordance with the Improvement Plan. The TIF Bond Proceeds and Excess TIF Revenues (and revenues from the Assessments imposed upon the Property) shall not be used by the City for any purposes other than as provided hereunder.

**Section 4.2** The City agrees to deposit all TIF Bond Proceeds and Excess TIF Revenues generated by the TIF District into the Construction Fund established for Public Infrastructure Costs, including the reimbursement of Developer for Public Infrastructure Costs and to apply such TIF Bond Proceeds and Excess TIF Revenues for such purposes. Excess TIF Revenues shall be made available hereunder for payment or reimbursement of Public Infrastructure Costs paid or incurred by Developer or any other Developer Affiliate to the extent that such amounts have not been reimbursed. As a final distribution prior to dissolution of the special tax allocation fund as described at Section 31-6-70 of the TIF Act, any funds remaining in such Construction Fund shall be applied to reimburse Developer or any other Developer Affiliate as described in the preceding sentence to the extent such reimbursement shall not previously have been made. The reimbursements contemplated in this Agreement will include the amount of Assessments (including imputed interest thereon at the interest rate of the most recently issued TIF Bonds) paid by Developer with respect to the TIF Bonds. Beginning with the first year that any Assessments are payable with respect to the TIF Bonds and continuing each year thereafter, Developer shall be required to deliver to the City a written report indicating which amounts of the Assessments for the applicable year are being paid by Developer or any other Developer Affiliate and are therefore potentially reimbursable under this Agreement. Such annual report shall also indicate any imputed interest to date that is applicable to previously paid Assessments as provided above.

**Section 4.3** City agrees that any proceeds of Assessments imposed within the Improvement District, or proceeds of loans to the City or bonds issued by the City to be paid or secured in part from assessments imposed thereon (including without limitation the TIF Bonds), shall not be used by the City for any purposes other than as provided under this Agreement or as otherwise agreed by the parties.

## **ARTICLE V- CONSTRUCTION REQUIREMENTS**

### **Section 5.1 Responsibilities with Respect to Construction.**

(a) Developer (or Developer Affiliate) shall cause all work performed by it with respect to the construction of Public Infrastructure Projects to be conducted in a good workmanlike and commercially reasonable manner. The Developer shall retain at all times adequate staff or consultants to administer and coordinate all work related to the design, engineering, acquisition, construction, and installation of the Public Infrastructure Projects. Pursuant to Sections 5.5 and 5.7 of this Agreement, the Developer and City shall meet prior to commencement of construction of each phase of the Public Infrastructure Projects and develop a schedule and budget for each such phase. The City shall make available TIF Excess Revenues and the TIF Bond Proceeds for reimbursement of Public Infrastructure Costs as set forth herein.

(b) Developer shall be paid a construction management fee as set forth in **Exhibit B**.

(c) Public Infrastructure Projects identified on **Exhibit B** will be undertaken by Developer, and the Public Infrastructure Costs incurred in connection as set forth in **Exhibit B**

therewith shall be reimbursed and/or directly paid from the TIF Bond Proceeds and Excess TIF Revenues in accordance with the terms of this Agreement.

(d) Upon written agreement of the City and Developer, **Exhibit B** may be amended from time to time to change individual Public Infrastructure Projects provided that such change does not compromise the economic viability of the Property and TIF Bonds as a whole. In addition, additional Public Infrastructure Projects may be added to **Exhibit B** from time to time at the request of the City or Developer upon written agreement of the City and Developer. After reimbursement of the Developer for the Public Infrastructure Costs incurred pursuant to and in the priority described in ARTICLE II of the MOU, the next \$500,000 in TIF Bond Proceeds or Excess TIF Revenue shall be applied to construction of a community center in the neighborhood of Rosemont, although the actual construction of the community center shall not be the responsibility of Developer.

**Section 5.2 Compliance with Applicable Requirements.** Developer shall construct the Public Infrastructure Projects that are undertaken in accordance with Applicable Requirements. The Developer shall obtain all necessary permits and approvals prior to commencing construction of any portion of an individual Public Infrastructure Project, and promptly thereafter shall commence and diligently pursue the completion of the approved portion of the Public Infrastructure Project in accordance with all Applicable Requirements and the timetable established pursuant to 5.5.

**Section 5.3 Approval of Plans.** The Developer shall cause all Plans to be prepared for the Public Infrastructure Projects by a Design Professional, duly licensed and in good standing in the State of South Carolina, and submitted for the City's prior written approval in accordance with the City's requirements and procedures as set forth in Section 8.2. The City shall not be obligated to make any disbursements hereunder with respect to a Public Infrastructure Project or portion thereof until the City has approved the Plans for the applicable Public Infrastructure Project or portion thereof, provided that design costs shall be reimbursed prior to approval of the Plans and prior to approval of the Schedule of Values (as defined in Section 5.7 below) for the applicable Public Infrastructure Project. The City's approval of the Plans shall not be deemed to waive the obligation of the Developer and/or the Design Professional to provide amendments to the Plans so that the Plans comply with Applicable Requirements if it is reasonably determined by the City that any such Plans do not comply. The Developer shall promptly provide to the City copies of each set of the Plans as required by the City's building codes and requirements and one reproducible copy of each set of the approved Plans, which shall become the property of the City, at no cost to the City. The Developer may not materially modify or amend the Plans approved by the City without the prior written consent and approval of the City as provided herein. For purposes of this Section 5.3, a material modification or amendment of the Plans for a Public Infrastructure Project shall be any change or changes which (a) involves a cost increase the greater of more than \$250,000 or 15 percent in aggregate of the cost of the particular Public Infrastructure Project, (b) impairs the structural integrity or configuration of the Public Infrastructure Project, or (c) results in a violation of any Applicable Requirement. Approvals of material modifications or amendments to the Plans that are requested by Developer shall be subject to the reasonable discretion of the City. Notwithstanding any provision to the contrary, Developer shall consult with the City Project Manager before amending or modifying the Plans for a Public Infrastructure Project.

**Section 5.4 Completion.** Subject to Section 8.5 and sufficient TIF Bond Proceeds and Excess TIF Revenue being available to reimburse Developer for Public Infrastructure Costs, the Developer shall complete individual Public Infrastructure Projects undertaken by the Developer for dedication by the Developer and acceptance by the City within the applicable period of time as set forth in the Project Schedule developed pursuant to Section 5.5. Changes to the commencement and completion dates set forth in the Project Schedule may only be made pursuant to the terms of

this Agreement. The Developer reasonably expects that the TIF Bond Proceeds will be fully disbursed and expended in accordance with the Project Schedule.

**Section 5.5 Project Schedule.** The Developer shall prepare and submit to the City project schedules for the individual Public Infrastructure Projects (each a "**Project Schedule**") for the City's approval prior to commencement of a Public Infrastructure Project. Failure to meet a date set forth in a Project Schedule shall not, in and of itself, constitute a material breach of this Agreement by Developer, but shall be subject to the Developer's opportunity to cure as provided herein and shall be based upon the totality of circumstances, including but not limited to materiality of the date and *force majeure* events. The obligation to meet a Project Schedule date shall at all times be subject to the availability of Excess TIF Revenues or TIF Bond Proceeds to reimburse Developer for the costs of the Public Infrastructure Project. If the Developer requests a modification in the dates as set forth in a Project Schedule and is able to demonstrate and establish that there is good cause to modify those dates, including, without limitation, changes in market conditions, delivery dates of materials, or production requirements, and any such change will not adversely affect the tax exempt status of the TIF Bonds, those dates shall be modified to the extent necessary in accordance with the terms of this Agreement. Individual Project Schedules shall be modified as applicable to reflect any changes in the applicable Plans. The modification of individual Project Schedules shall be submitted and reviewed in accordance with the approval procedure set forth in Section 8.2.

**Section 5.6 Independent Contractor.** In performing this Agreement, the Developer is an independent contractor and not the employee of the City. Except as set forth in this Agreement, the City shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee, or supplier of the Developer but shall be responsible to fund amounts to the Developer (or Developer Affiliate as applicable) in accordance with this Agreement, unless otherwise directed in writing by the Developer to fund directly to Developer's contractors, suppliers and consultants.

**Section 5.7 Project Budget; Schedule of Values.** The initial cost budget estimate to complete the Public Infrastructure Projects is set forth on **Exhibit B** attached hereto, together with the project breakdown for each applicable phase. The budget estimates for a Public Infrastructure Project set forth on **Exhibit B** hereto may be amended from time to time to reflect increases, decreases, or reallocations as approved in writing by the City Project Manager such approval not to be unreasonably withheld. Prior to commencement of work on any Public Infrastructure Project, the Developer shall prepare and submit to the City for the City's review and approval a detailed cost breakdown allocating values to various portions of the applicable Public Infrastructure Project by each trade and division of the work ("**Schedule of Values**"). The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the City may reasonably require. The Schedule of Values with trade payment breakdown shall provide sufficient detail to identify sections of the Public Infrastructure Project by convenient or meaningful units and shall be updated as reasonably required by the City. Any Schedule of Values or trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the work shall be rejected. The Schedule of Values for one or more Public Infrastructure Projects shall be modified from time to time as necessary to reflect any changes to the applicable Plans or any differences in estimated and actual costs. The approval of a Schedule of Values or any modification thereto shall be submitted and reviewed in accordance with the approval procedure set forth in Section 8.2.

**Section 5.8 Mortgages and Other Liens to be Subject to this Agreement.** In connection with the acquisition, financing of, development and construction on the Property (other than Public Infrastructure Projects funded under this Agreement), the Developer may from time to time grant mortgages or other liens to its lenders. Any mortgage or other liens which may

encumber the Property shall be subject to the condition that all Public Infrastructure Projects funded under this Agreement, together with all easements necessary for the operation and maintenance thereof, shall upon acquisition by Lender or its assignee be conveyed to the City upon completion thereof and acceptance thereof by the City as provided herein and in the Applicable Requirements without further consideration from the City, free and clear of any such mortgage or other lien or encumbrance, and any such lien holder shall upon request execute and record an acknowledgement that such Public Infrastructure Project, and all easements associated therewith, are released from such lien. In order to provide record notice of this provision, the City may require that this Agreement or a short form notice thereof be recorded in the county office of Register of Mesne Conveyance. Any existing mortgagee or other lien holder as of the date of such recording must execute a subordination of its lien to this Agreement. The City agrees that if requested by Developer it shall issue estoppels confirming that no default exists under this Agreement or associated TIF documents.

**Section 5.9 Subordination to Lien for Assessments.** As provided at Section 5-37-130 of the Municipal Improvements Act, the lien for Assessments against the Property and any lots or tracts subdivided therein shall be superior to any lien other than property tax liens, and accordingly shall be superior to any mortgage, lien or other encumbrance granted by the Developer to any lender or any other party.

**Section 5.10 Payment and Performance Bonds.** Contractors for Public Infrastructure Projects shall be required to obtain payment and performance bonds, unless Developer shall determine otherwise with the consent of the City Project Manager. However, the City shall not require payment and performance bonds for contracts for less than \$250,000. Such bonds are to be secured by cash, or a letter of credit or must be issued by a surety company licensed in the State of South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability" or other equivalent protection as approved by City Project Manager. Such bonds will name the City and Developer as the obligees and will be on a modified AIA Bond Form A312 (1984 ed.), an example of which is attached hereto as **Exhibit F**.

**Section 5.11 Developer's Agent.** Developer may from time to time appoint an agent to act on its behalf hereunder ("**Developer's Agent**"). The initial Developer's Agent shall be provided to the City by Developer pursuant to the notice provisions in Section 10.3 of this Agreement. The Developer may replace the Developer's Agent at any time and shall provide written notice of such replacement to the City.

**Section 5.12 Warranty.** The City and Developer shall obtain warranties from the Contractor constructing the Public Infrastructure Project that (a) materials and equipment furnished will be of good quality and new (unused) unless otherwise permitted by this Agreement or unless the City approves of reasonable substitutes presented by the Developer (such approval not to be unreasonably withheld); and (b) that the work will be of good quality, free from faults and defects and in conformance in all material respects with this Agreement, any amendments hereto, and the Plans. Contractors constructing Public Infrastructure Projects shall agree that any defects found within the said work will be repaired at contractor's expense for the period of at least one year (two years for road improvements) from substantial completion of the Public Infrastructure project or portion thereof as agreed to by the City Project Manager. Defects shall be defined as any work or services performed that do not comply with the Plans. With respect to roads, for purposes of commencement of such two year period applicable to road improvements, final approval shall mean approval by the City Project Manager of all work other than the final wearing surface of the road if such surface application is postponed with the consent of the City to avoid damage from ongoing construction activities.



**Section 5.13 Contractors.** Contractors to perform work on a Public Infrastructure Project shall be selected by Developer, subject to consultation with the City provided however, except as set forth herein or unless City agrees otherwise, Developer shall obtain at least three competing bids. Notwithstanding the preceding sentence, contractors and consultants performing environmental remediation work and Design Professionals (because of their unique expertise) shall be selected by Developer. The Parties affirm the City's Minority/Women Disadvantaged Business goals of 20% and their intention to work to achieve such goals.

**Section 5.14 Indenture Provisions.** Upon issuance of the TIF Bonds, certain procedures for the City's requisitioning of TIF Bond Proceeds may be set forth in an Indenture. The Developer shall provide all items and other information as may be reasonably required by the City to comply with such requisitioning procedures. Notwithstanding anything to the contrary contained herein, however, the City shall not be obligated to pay for a Public Infrastructure Project except as set forth herein. The City agrees to make available the Excess TIF Revenues and the TIF Bond Proceeds in the amounts as set forth herein. The City and Developer makes no warranty, express or implied, that the available TIF Bond Proceeds and Excess TIF Revenues will be sufficient to pay the Public Infrastructure Costs provided, however, that Developer shall have no obligation to construct individual Public Infrastructure Projects if TIF Bond Proceeds and Excess TIF Revenues do not exist to reimburse Developer for such individual Public Infrastructure Costs.

**Section 5.15 Notice of Project Commencement.** Developer shall require its general contractors to file a Notice of Project Commencement in accordance with the provisions of South Carolina Code Ann. §29-5-23 prior to the commencement of any Public Infrastructure Project.

**Section 5.16 Right of Way Abandonments.** The Parties contemplate that parts or all of Oceanic Street, Braswell Street, and Milford Street may be abandoned and/or relocated. To the extent permitted by applicable laws, the City shall abandon and/or convey to Developer any rights of way or portions thereof that do not constitute part of the new streets or other public areas to be constructed by Developer, and the City shall cooperate with and support Developer in connection with the timing of any abandonments and obtaining approvals of any other governmental authorities that may be required. The City and the Developer shall work together to provide temporary access to property owners affected by Public Infrastructure Projects, including the City making available other existing public roads. With respect to the Parker Marine Property (Tax Parcel 466-00-00-043) specifically, the City shall be responsible for all negotiations with Parker Marine Property owners and operators regarding access to and from such property (and resolution of all access issues); provided however that Developer shall provide land for and construct a temporary road connecting the Parker Marine Property to Braswell Street for the time period during which Milford Street is closed due to Public Infrastructure Projects by Developer.

**Section 5.17 [Reserved]**

**Section 5.18 Replacement Facilities.** Developer and City agree that, pursuant to the MOU, Developer (or a Developer Affiliate) shall manage the construction of facilities to replace the City's public services facilities currently located at Milford Street with facilities to be located at the agreed upon WR Grace replacement site ("**Replacement Facilities**"). The cost to construct the Replacement Facilities shall be paid with the proceeds of the TIF Bonds in the priority set forth in the MOU and subject to the following:

- (i) Any costs in excess of \$18,000,000 (as adjusted pursuant to ARTICLE IV, paragraph 4 of the MOU) shall be the sole responsibility of the City;
- (ii) The costs of the Replacement Facilities which are not to be paid from TIF

Bonds Proceeds shall be the sole responsibility of the City; and

- (iii) It is agreed that the deadline for commencement of construction of the Replacement Facilities, subject to available TIF Bond Proceeds and Excess TIF Revenue in the priority set forth in the MOU, will be December 31, 2018 provided, however, the current estimate of when TIF Bond Proceeds will be available for construction of the Replacement Facilities is calendar year 2024.
- (iv) In addition, ARI may terminate the current lease dated December 19, 2008 between the City of Charleston and Ashley II of Charleston, LLC by providing written notice no later than thirty-six (36) months prior to the effective date of the termination; provided, however, if a final Certificate of Occupancy for the Public Works Facility has not been issued by the termination date, the lease shall not terminate until sixty (60) days after a final Certificate of Occupancy for the Public Works facility has been issued.

If the TIF Bonds issued for the Replacement Facilities or any TIF Bonds issued thereafter are to be issued on a parity basis with any outstanding TIF Bonds (such TIF Bonds for the Replacement Facilities and subsequent TIF Bonds being referred to collectively herein as "Subsequent Parity TIF Bonds"), then such Subsequent Parity TIF Bonds shall not be issued until such time as the projected annual TIF Revenue in the next tax year exceeds by a factor of 1.2 the maximum sum of the annual debt service on all outstanding TIF Bonds and the projected annual debt service on any Subsequent Parity TIF Bonds being issued.

The site plan and design specifications for the construction of the Replacement Facilities shall be developed by the parties with each party retaining an original set ("**Replacement Specifications**"). Developer or Developer Affiliate shall manage the construction of the Replacement Facilities, including the selection and supervision of all contractors.

Solely with respect to the Replacement Facilities, Developer (or if applicable Developer Affiliate) shall be paid a construction management fee of 5% applicable to the total hard and soft costs associated with the Replacement Facilities. In addition, Developer (or Developer Affiliate) shall be reimbursed for all of its out of pocket expenses incurred with respect to the planning, development and construction of the Replacement Facilities including legal fees associated with negotiation of contracts, performance of work and resolution of claims related to the Replacement Facilities. The Developer and the City shall work together with respect to development of the Replacement Specifications for the Replacement Facility, provided however that such final Replacement Specifications shall be provided by City to Developer and provided however that the total cost of the Replacement Facility as modified pursuant to such final Replacement Specifications shall not exceed the amount established in Section 5.18(i) of this Agreement. Developer's (and Developer Affiliate's) scope of work shall not include any investigation and/or remediation of environmental impacts at the property upon which the Replacement Facilities are to be constructed and City shall obtain a conditional certificate of completion (with the remaining condition being placement of building pad, pavement, or other cover acceptable to DHEC) pursuant to the South Carolina Voluntary Cleanup Program prior to Developer (or Developer Affiliate) commencing construction of the Replacement Facilities. The costs associated with soil taken offsite by Developer pursuant to construction of the Replacement Facilities shall be at the

City's expense and shall be among "the cost to construct the Replacement Facilities" contemplated by this Section 5.18 and Article IV, paragraph 4 of the MOU. The City and/or the Contractor shall execute any required manifests for soil disposal. Notwithstanding anything else contained in this Agreement, the City and the Developer agree that they shall look solely to the design professionals and contractors (and not each other) designing and constructing the Replacement Facilities (and as appropriate any sub-contractors and/or suppliers) with respect to any claims, disputes or deficiencies associated with the design and construction of the Replacement Facilities.

## **ARTICLE VI - DISBURSEMENT REQUESTS**

**Section 6.1 Monthly Disbursements.** The Developer and Developer's contractor upon written directive by Developer shall be entitled to receive from the City disbursements of TIF Bond Proceeds or direct disbursements of Excess TIF Revenues for reimbursement and/or direct payment of the Public Infrastructure Costs incurred by them which are eligible for reimbursement on a monthly basis provided the requirements and conditions for such disbursements set forth herein are met. No more frequently than once per month, the Developer may request disbursement of TIF Bond Proceeds (and/or Excess TIF Revenues) only for Public Infrastructure Costs that the Developer has actually incurred (which includes construction management fees, or if to be paid directly to contractor, for work already performed) and for which disbursements have not been previously made. Public Infrastructure Costs that are eligible for reimbursement hereunder shall include any such costs incurred by Developer from and after January 1, 2013 which as of April 13, 2015 equals approximately \$887,000. Any Public Infrastructure Costs paid by Developer prior to the availability of Excess TIF Revenues or TIF Bond Proceeds remain eligible for reimbursement hereunder as and when Excess TIF Revenues or TIF Bond Proceeds become available.

**Section 6.2 Disbursement Requests.** When the Developer (or as applicable, its contractors) seeks disbursements for Public Infrastructure Costs that it has incurred or that are to be paid directly, the Developer shall deliver to the City an application for payment on Standard AIA forms (i.e., G702 or G703) or such other form agreed to by the City, together with the information and documentation required pursuant to the applicable sections of Article VI hereof as applicable for such disbursement and, in all cases, the following documentation in form and content reasonably satisfactory to the City (collectively, a "**Disbursement Request**");

6.2.1 **Work Completed.** Written notice from the Developer or its designee of the performance of the portions of the work that constitute Public Infrastructure Projects as set forth on the applicable Schedule of Values for which the Developer is seeking reimbursement of associated Public Infrastructure Costs;

6.2.2 **Evidence of Costs Incurred.** Evidence that Developer has incurred the Public Infrastructure Costs for which reimbursement is being sought (or that the work has been performed if contractor is to be paid directly) and for which payment has not been previously made;

6.2.3 **Lien Waivers.** Duly executed waivers of mechanic's and materialmen's liens from the Developer's general contractor (partial or final, as applicable); a duly executed and acknowledged affidavit of the general contractor showing all subcontractors with whom the Developer's contractor has entered into subcontracts, the amount of such subcontract, the amount requested for any subcontractor in the Disbursement Request, the amount to be paid to the contractor from such progress payment, statements that there are no claims of mechanic's or materialmen's liens submitted to the contractor at the date of such Disbursement Request and that

all due and payable bills with respect to the work have been paid to date or shall be paid from the proceeds of such Disbursement Request;

6.2.4 Design Professional's Certificate. A certificate from the Design Professional or Approved Reviewing Consultant that the work included in the Disbursement Request is substantially consistent with the Plans approved by the City and all other Applicable Requirements (such certificate shall be in a form substantially similar to the Design Professional's Certificate form attached hereto as Exhibit D);

6.2.5 Indenture Requisition. All other items and information required to be submitted for a requisition of funds as set forth in the Indenture (if such Indenture exists), which shall include a certification with respect to each Disbursement Request: (a) the amount to be paid; (b) the nature and purpose of the obligation for which such payment is requested; (c) the person, firm, or corporation to whom such obligation is owed or to whom a reimbursable advance has been made; (d) that such obligation has been properly incurred and is a proper payment under the Indenture and has not been the basis of any previous advance; (e) that the Developer has not received notice of any mechanic's, materialmen's or other liens or right to liens or other obligations (other than those being contested in good faith) that should be satisfied or discharged before payment of such obligation is made; and (f) that such payment does not include any amount that is then entitled to be retained under any holdbacks or retainages provided for in any agreement; and

6.2.6 Other Information. Such other information, certificates, inspections, opinions and reports as may be reasonably requested by the City for the purposes of confirming that the TIF Bond Proceeds and/or Excess TIF Revenues are being used for the purpose intended.

At no time shall the Developer's failure to submit a Disbursement Request for any given month constitute or be construed as a waiver by the Developer of its rights hereunder to be reimbursed for such Public Infrastructure Costs.

**Section 6.3 City's Approval.** Within ten business days following the City's receipt of a Disbursement Request or re-submittal of a revised Disbursement Request (excepting Saturdays, Sundays, and legal public holidays), the City Project Manager shall provide to the Developer its written notice of approval or rejection, as the case may be, of the Disbursement Request, in the event that the City Project Manager rejects a Disbursement Request, the City Project Manager shall provide to Developer a specific explanation of the reason for rejection and the requirements to remedy the deficiency.

**Section 6.4 Payment of Disbursement Request.** Within ten business days following the City's receipt of a satisfactory Disbursement Request and provided that all of the applicable conditions precedent as set forth in Articles VI and VII herein (if applicable) been met, the City shall issue its approval for such Disbursement Request and direct the disbursement of such amount set forth in the Disbursement Request within 3 business days. The City shall have no obligation to approve a Disbursement Request unless all of the applicable conditions set forth in Articles VI and VII have been satisfied; provided, however, the City may waive Developer's satisfaction of any condition from time to time in its sole discretion. Acceptance or approval by the City or any inspector designated by the City of a Disbursement Request or payment made in response to a Disbursement Request shall not constitute final acceptance or approval by the City of defective work.

**Section 6.5 Limited Liability of City.** The Developer agrees that any and all obligations of the City arising out of or related to this Agreement are special obligations of the City, and the City's obligations to make any payments hereunder are restricted entirely to available

TIF Bond Proceeds and Excess TIF Revenues (plus such additional TIF Revenues as provided under the Indenture) as provided pursuant to the terms of the Indenture, and from no other source. No member of the City Council, the Mayor, or any other past, present or future City employee, officer, attorney, agent or representative shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

**Section 6.6**     **Audit.** The City or its designee shall have the right, during normal business hours in the Developer's offices (or such other place designated by the parties) and upon the giving of ten days prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer with respect to any of the Public Infrastructure Projects and any bids taken or received for the construction thereof or materials therefor.

For purposes of Articles III, IV, V, VI, VII and VIII herein, Developer shall include Developer or Developer Affiliate.

## **ARTICLE VII - CONDITIONS TO DISBURSEMENTS**

**Section 7.1**     **Conditions Precedent to Certain Initial Disbursements.** At least 15 business days prior to the first Disbursement Request for Public Infrastructure Costs for each Public Infrastructure Project, the Developer shall provide the City with the following with respect to each Public Infrastructure Project or portion thereof:

7.1.1            **Evidence of Title.** An affidavit in the form attached as **Exhibit G** by the Developer confirming that the Developer has title to or a valid easement over or other valid right to construct upon the land upon which such Public Infrastructure Project is to be constructed.

7.1.2            **Release of Mortgage or other Lien.** To the extent that the Property upon which the Public Infrastructure Project is constructed is to be conveyed to the City, if such Property is encumbered by any mortgage or other lien, Developer shall provide a release or written confirmation that such release will be granted or subordination provided from the holder of such mortgage or any other lien.

7.1.3            **Insurance Requirements.** A certificate of insurance for each Public Infrastructure Project naming the City as an additional insured and showing the following types of insurance and in the amounts set forth below, all of which must be from companies with an "A-" rating or better as rated by A.M. Best:

7.1.3.1        **Workers' Compensation Insurance.** Workers Compensation Insurance, as prescribed by applicable law covering all employees of the Developer's general contractor(s) and Employer's Liability coverage of Developer with limits as required by law.

7.1.3.2        **Commercial General Liability Insurance (Primary and Umbrella).** Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence for bodily injury, personal injury, and property damage liability. The City is to be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.3.3 Automobile Liability Insurance (Primary and Umbrella). When any motor vehicle (owned, non-owned and hired) is used in connection with work to be performed in connection with a Public Infrastructure Project, the general contractor for such Public Infrastructure Project shall provide (or cause to be provided by its subcontractors) Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage if such coverage is not maintained by the Developer. The City shall be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.3.4 Builders Risk Insurance. When the general contractor for a Public Infrastructure Project undertakes any vertical construction in connection with a Public Infrastructure Project, including improvements, and/or repairs, it shall provide, or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery, and fixtures (that are or will be part of the Public Infrastructure Project. The City shall be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.3.5 Contractor's Pollution Liability. When any environmental remediation work is performed in connection with a Public Infrastructure Project which may cause a pollution exposure, if available on commercially reasonable terms, Contractor's Pollution Liability shall be provided on claims made policy with limits of not less than \$1,000,000 insuring bodily injury, property damage and environmental remediation, cleanup costs and disposal. The City shall be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.4 Survey. If the Public Infrastructure Project is to be constructed upon property to be conveyed to the City, a preliminary survey meeting the reasonable requirements of the City and sufficient for preparing a legal description for recording a mortgage of the land upon which such Public Infrastructure Project is to be located and which boundary survey will be the basis of the legal description for the real property to be conveyed and/or dedicated to the City.

7.1.5 Environmental. Evidence reasonably satisfactory to the City that any environmental contamination located within the Property upon which such Public Infrastructure Project is to be located either is, or will be, remediated, contained, or otherwise addressed in a manner as required under state and federal laws and regulations to permit the use of such land for its intended purpose. Such satisfactory evidence shall include but not be limited to as-built drawings of engineering controls to address environmental conditions for such land that comply with control methods that have been approved by DHEC, and if applicable, the United States Environmental Protection Agency. The City acknowledges the existence of hazardous materials on the land and agrees to accept the Public Infrastructure Projects and applicable land provided that any environmental contamination located within the Property upon which such Public Infrastructure Project is to be located either is, or will be, remediated, contained, or otherwise addressed in a manner consistent with an approved Work Plan with either DHEC or EPA or other method acceptable to the City, and provided that Developer has complied with applicable soil management plans.

7.1.6 Compliance with Requirements; Permits. A certificate of the Developer's Design Professional or Approved Reviewing Consultant that the Public Infrastructure Project and the land on which it is located will comply with all Applicable Requirements (except those which might be contractually imposed under the Development Agreement) and that all permits necessary for construction have been obtained for such portion of the Public Infrastructure Project or can be obtained in the ordinary course.

7.1.7 Construction Documents. Copies of the applicable Construction Documents, including approved Plans for the applicable Public Infrastructure Project, and a certificate from the Design Professional that the Plans for such work are in compliance with all applicable laws, zoning and other ordinances, rules, regulations, and restrictions affecting the performance of such work, and a completion and draw schedule and a breakdown of direct and indirect costs of the work on which all payment requests by the Developer will be based. The Developer shall not modify or amend any of the Construction Documents in any material respect without the prior written consent of the City, which consent shall not be unreasonably withheld, provided that the Construction Documents shall be amended as reasonably required to comply with any approved changes to the Plans or otherwise as reasonably requested by Developer with respect to change orders.

7.1.8 Collateral Assignment of Contracts. A collateral assignment to the City of the portion of Construction Documents applicable to the Public Infrastructure Project, all of which shall be reasonably acceptable to the City as to form and content, together with all necessary consents from the Design Professional and general contractor.

7.1.9 Payment and Performance Bonds. Payment and performance bonds as required under Section 5.10 hereof.

7.1.10 Notice of Project Commencement. Notice of Project Commencement with proof of filing as required under Section 5.15 hereof.

**Section 7.2 Conditions Precedent to Subsequent Disbursements.** All Disbursement Requests subsequent to the initial Disbursement Request for a Public Infrastructure Project shall be subject to the following conditions at the time of the Disbursement Request:

7.2.1 Prior Conditions. All other applicable conditions set forth in Section 6.2 shall have been met to the satisfaction of the City or waived in writing by the City.

7.2.2 Disbursement Request. The City and if applicable the Trustee shall have received a Disbursement Request conforming to the requirements set forth in Section 6.2 of this Agreement and the Indenture.

7.2.3 City Inspection. The City Project Manager shall have determined, in accordance with the provisions of this Agreement, that the portion of the work that is the subject of the Disbursement Request has been completed in accordance with the Plans, this Agreement and all other Applicable Requirements, such determination to be made within five business days (excepting Saturdays, Sundays, and legal public holidays) of the date the City receives the Disbursement Request.

7.2.4 Certificate. The Developer shall furnish to the City the items required to be provided pursuant to Sections 7.1.1 and 7.1.2.

**Section 7.3 Conditions for All Payments.** Unless otherwise expressly agreed in writing by the City, the obligation of the City to make any payment to the Developer under this Agreement is subject to the satisfaction of the following conditions at the time of making such payment;

7.3.1 Representations True. All representations and warranties of the Developer under this Agreement and all other agreements delivered by the Developer in

connection with this Agreement for the benefit of the City shall be true and correct in all material respects as of the date of the payment.

7.3.2 No Defaults. The Developer shall not have received notice that it is in default under the terms of this Agreement or any of the Construction Documents, or any other related agreement with or for the benefit of the City not cured within the time provided herein or therein.

7.3.3 Compliance. The Developer shall have complied in all material respects with all agreements and satisfied in all material respects all conditions on its part to be performed or satisfied at or prior to the date of such payment.

7.3.4 No Damage. The work shall not have been materially injured or damaged by fire or other casualty, or if so damaged, provisions reasonably satisfactory to the City have been made to effect necessary restoration, repair or compensation to the City.

7.3.5 Certificate. If required by the City, the Developer shall furnish to the City a certificate dated as of the date of such request for payment and executed by an authorized Developer representative, confirming the satisfaction of any one or more conditions of the foregoing sections 7.3.1 through 7.3.4.

**Section 7.4 Surveys.** Prior to the final disbursement on a particular Public Infrastructure Project, if land or infrastructure is to be conveyed to the City, then upon the request of the City, Developer shall provide a current certified survey of as built conditions, showing all improvements, easements (existing and proposed, labeled accordingly), rights of way, utilities, means of ingress and egress, setback lines and encroachments, if any, acceptable to the City.

**Section 7.5 Additional Terms or Agreements.** The City and Developer agree that they shall execute amendments to this Agreement or other documents as may be reasonably necessary to effectuate this Agreement.

## **ARTICLE VIII - CITY'S REVIEW AND INSPECTION RIGHTS; CONVEYANCE TO THE CITY**

**Section 8.1 City Project Manager.** The City shall designate a qualified individual to act as City Project Manager for the purposes of monitoring the Developer's construction of the Public Infrastructure Projects in accordance with all Applicable Requirements of this Agreement. The City Project Manager shall coordinate with all City departments in a timely manner in order to ensure that that he or she has the necessary environmental, engineering and other resources readily available to discharge the duties of this position. The City Project Manager shall respond as promptly as reasonably possible to requests for approval and permits from Developer. Failure of the City Project Manager to act upon or respond to (including but not limited to requests for additional information) a Developer request accompanied with all required documentation within 30 calendar days shall be deemed approval by the City, and Developer shall have the rights to proceed as provided in Section 6-29-1150 of the S.C. Code of Laws. Costs, as provided for herein, properly allocable to the City and/or the City Project Manager, shall be payable from TIF Bond Proceeds, provided that such work and fees by or on behalf of the City or the City Project Manager shall be properly documented by the City and provided that such fees and expenses shall not exceed \$150,000 annually and shall not exceed on average one percent of the aggregate cost of the applicable Public Infrastructure Project and shall not exceed in aggregate the amount set forth in **Exhibit B**. The City shall notify the Developer of the name and address of the City Project



Manager. All inspectors for the City shall, upon entry to the Public Infrastructure Project site, check in with the site superintendent or project manager. While on the site, all inspectors for the City shall comply at all times with all applicable safety guidelines required by applicable law and reasonable site safety rules imposed by the Developer's contractor. The City shall reasonably require such inspectors to perform their duties in a timely manner.

**Section 8.2 City Review Processes.** Each Public Infrastructure Project shall be subject to the Applicable Requirements for review and permitting. As part of City's regular plan review process, the Plans for each Public Infrastructure Project shall be reviewed by the City prior to commencement of construction, with the anticipation that such Public Infrastructure Project is to be built for public dedication and acceptance. Developer shall submit its proposed Plans for a Public Infrastructure Project to the City Project Manager for review and approval. The City Project Manager shall be responsible for coordinating and compiling comments from any relevant City departments. Within 30 calendar days of such submittal, the City Project Manager shall provide any comments on the proposed Plans and be available to meet with the Design Professionals. Within 30 calendar days of re-submittal of any revised Plans, the City Project Manager shall respond with any further comments. In the event that the City Project Manager fails to substantively respond to Developer within 10 business days after notice from Developer to the City that the City Project Manager has failed to respond within the required time period, the submitted Plans shall be deemed approved. Approval of Plans shall not be unreasonably withheld so long as the Plans conform to the Applicable Requirements and the other terms of this Agreement. Any proposed modifications to approved Plans shall be submitted to the City Project Manager and shall be subject to the process set forth above. In connection with its review, the City Project Manager shall, in addition to the inspecting Design Professional, monitor the construction for compliance with all Applicable Requirements. Provided, however, such review and monitoring shall not impose any liability on the City for compliance of any Public Infrastructure Project or any part thereof with any such requirements. Except as expressly set forth herein, nothing in this Agreement shall be deemed to modify, amend, alter, or waive any of the procedures and requirements as prescribed by the City for review, approval, dedication, and acceptance of the Public Infrastructure Projects. In the event of any dispute with regard to the Plans, Project Schedules, Schedule of Values, or acceptance of completed Public Infrastructure Projects, the City Project Manager and Developer's applicable Design Professionals shall meet and attempt to resolve such dispute. In the event that the dispute is not resolved within 30 calendar days, the City Project Manager and the Design Professionals shall select a third party qualified professional to resolve the issue. When a certain number of "business" days is specified it is understood that this does not include weekends and holidays observed by the City.

**Section 8.3 Completion; Acceptance.** Upon receipt of notice from the Developer of the completion of construction of an applicable Public Infrastructure Project, the City Project Manager shall inspect the same to determine compliance with all Applicable Requirements. When all or a portion of a Public Infrastructure Project is to be conveyed to the City, Developer shall provide the City Project Manager with "as-built" drawings (as appropriate and customary for a particular project), applicable warranties, plats, deeds, bills of sale, and other documentation as may be necessary to cause such Public Infrastructure Project to be dedicated and/or conveyed to the City. After the City determines that a Public Infrastructure Project is in substantial compliance with all Applicable Requirements, the City Project Manager shall use reasonable efforts to place the item on the agenda at the earliest practical regularly scheduled meeting of City Council for action by City Council to accept conveyance and/or formal dedication of the applicable Public Infrastructure Project. Individual Public Infrastructure Projects and applicable land will be accepted by the City upon tender by the Developer provided that such Public Infrastructure Projects are completed in accordance with the terms hereof. Developer acknowledges that it is required to complete all Public Infrastructure Projects only if required and funded under this Agreement and, with respect to any Public Infrastructure Project to be conveyed to City upon

completion, to convey the same to the City or other appropriate public entities, free and clear of all liens and encumbrances subject to applicable deed restrictions in place with DHEC and/or EPA. In compliance with the provisions of the Indenture, such conveyances shall be made in such fashion and within such time as shall be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the TIF Bonds.

**Section 8.4 Non-Compliance.** If in the course of its review of a Public Infrastructure Project the City determines that the Developer has failed to construct a Public Infrastructure Project in accordance with all Applicable Requirements, the City shall provide specific, written notice of how the Public Infrastructure Project does not comply with the Applicable Requirements. In the event that the Developer fails to diligently pursue and complete the cure of such defects within 30 days after written notice from the City of such breach (as such date shall be extended if Developer timely commenced such cure and is proceeding with due diligence to complete such cure), the City shall have, in addition to any other rights and remedies which may be available under this Agreement or at law or in equity, the right to draw on the TIF Bond Proceeds to cure such defects and reduce the amount of TIF Bond Proceeds to which the Developer is entitled under this Agreement by the amount necessary to cure such defects.

**Section 8.5 Failure to Complete.** If after commencement of physical work on an individual Public Infrastructure Project and Developer has been reimbursed for related Public Infrastructure Costs paid on work performed, the Developer fails to complete such Public Infrastructure Project within the time period provided herein (excluding delays due to *force majeure*), the City may provide specific, written notice of such failure. In the event that the Developer fails to diligently pursue and complete that Public Infrastructure Project within 30 days after written notice from the City of such failure as such date shall be extended if Developer timely commenced such cure and is proceeding with due diligence to complete such cure, the City shall have, in addition to any other rights and remedies which may be available under this Agreement or at law or in equity, the right to draw on the TIF Bond Proceeds to complete the Public Infrastructure Project and reduce the amount of TIF Bond Proceeds to which the Developer is entitled under this Agreement by the amount necessary to complete such Public Infrastructure Project. For purposes of this Agreement, *force majeure* shall include but not be limited to delays due to strikes, lock-outs, war, civil disturbance, natural disaster, acts of terrorism or acts of God, weather or other similar events beyond the control of the party which delay performance, including unexpected or unanticipated environmental subsurface, geotechnical or structural conditions (including historical artifacts) encountered during construction and/or delays due to USEPA, SCDHEC or other governmental reviews and approvals with respect to environmental conditions at the Property.

**Section 8.6 Approved Reviewing Consultants.** In order to expedite the review and approval process by the City, the Developer may use an Approved Reviewing Consultant to perform services normally performed by City employees; however, final approval of any plans or inspections shall be made by the designated City official, subject to the terms of this Agreement. The City Project Manager shall ensure that the designated City official shall expeditiously review and act on the recommendations and findings of an Approved Reviewing Consultant. If the Approved Reviewing Consultant is providing services related to a Public Infrastructure Project, the cost of the Approved Reviewing Consultant shall be included in the Public Infrastructure Costs.

## **ARTICLE IX - TERMINATION**

**Section 9.1 Events of Default.** The following events shall constitute grounds for the City, at its option, to terminate this Agreement, without the consent of the Developer.

9.1.1 Bankruptcy. The Developer shall voluntarily file for reorganization or other relief under any federal or state bankruptcy or insolvency law, or the Developer shall have any involuntary bankruptcy or insolvency action filed against it which is not dismissed within 180 days, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of its assets, or shall suffer an attachment or levy of execution to be made against the property it owns which is not dismissed within 180 days.

9.1.2 Stop Work. The Developer shall for reasons other than *force majeure* or other reasonable causes (reasonable causes including insufficient TIF Bond Proceeds or Excess TIF Revenues to reimburse Developer for Public Infrastructure Costs) abandon or substantially suspend construction of a Public Infrastructure Project for which a construction contract has been issued or the Developer abandons the development of the Property in its entirety and such abandonment or suspension is not cured or remedied within 60 days after written demand is made by the City unless Developer is proceeding diligently to complete such cure.

9.1.3 Covenant Default. The Developer shall breach any material covenant or default in the performance of any material obligation under this Agreement, any of the Construction Documents, or any other agreement with or for the benefit of the City unless Developer is proceeding diligently to cure such breach or default.

9.1.4 Misrepresentation. The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with the development of the Property or any offering document or bond purchase agreement used in connection with the sale of the TIF Bonds, or any representation or warranty contained in this Agreement shall have been or shall be untrue or incorrect in any material respect when made or when deemed made.

9.1.5 Invalidity. The Developer shall at any time challenge the validity of the Development Agreement between Developer and City in effect at that time, any of the TIF Bonds, this Agreement, any of the documents related thereto, or the levy of any *ad valorem* properly tax or the imposition of any assessment under the Municipal Improvements Act or other charge, or any of the foregoing shall be deemed invalid, illegal or unenforceable and Developer refuses to enter into such modifications or new agreements as required to establish the validity, legality, or enforceability thereof,

**Section 9.2 Right to Terminate**. If any such event of default occurs and is not cured within the applicable cure period, as extended by Developer's diligent efforts to cure such default the City shall give written notice of its knowledge thereof to the Developer and the Developer agrees to meet and confer with the City or appropriate City staff as to options available to assure timely completion of any Public Infrastructure Project. Such options may include, but are not limited to, the termination of this Agreement by the City. If the City elects to terminate this Agreement, the City shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the City to receive such notice) of the grounds for such termination and allow the Developer a minimum of 90 days to eliminate or mitigate to the satisfaction of the City the grounds for such termination; provided that no cure period shall apply for any voluntary bankruptcy filing listed in Section 9.1.1; and provided that in the event of a default listed in Section 9.1.2 or Section 9.1.5, no additional cure period shall be provided beyond the applicable cure period. Such period shall be extended if the Developer is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof) the default has not been cured, the City may then terminate this Agreement. In the event of the termination of this Agreement, the Developer is entitled to reimbursement for work related to the Public Infrastructure Project undertaken prior to the termination date of this

Agreement solely from the available TIF Bond Proceeds and Excess TIF Revenues according to the terms and conditions set forth in this Agreement.

**Section 9.3 Cease Payments.** Notwithstanding the foregoing, so long as any event listed in any of Section 9.1.1 through 9.1.5 above has occurred, notice of which has been given by the City to the Developer, and such event has not been cured or otherwise mitigated by the Developer, the City may in its discretion cease making payments for the Public Infrastructure Costs, provided that the Developer may receive payment of the Public Infrastructure Costs that have been incurred for work completed at the time of the occurrence of an event listed in Section 9.1 above upon submission of a Disbursement Request and compliance with the Applicable Requirements. In the event a cessation of payment occurs pursuant to this Section, such payment shall resume upon cure or appropriate mitigation by the Developer.

**Section 9.4 Additional Remedies.** In addition to the rights set forth above, the City shall have the right upon any termination of this Agreement to redeem any of the TIF Bonds in accordance with the provisions of the TIF Bond Ordinance and the Indenture and shall have the right to (but shall not be required to) execute contracts for or perform any remaining work related to the Public Infrastructure Projects not otherwise completed and use all or any portion of the Bond Proceeds for such purposes, and, except as otherwise provided herein, the Developer shall have no claim or right to any further payments for the Public Infrastructure Costs hereunder. In addition to any of the foregoing rights and remedies, the City may pursue all other rights and remedies available to it under this Agreement and otherwise available to it at law or in equity including the remedy of specific performance. Without limiting the generality of the foregoing, the City shall be entitled to take title, without additional compensation other than payment of any outstanding Public Infrastructure Costs to the extent of available remaining funds available hereunder, to all Public Infrastructure Projects previously funded under this Agreement, but the City shall not be required to do so until any such Public Infrastructure Project is completed to the City's satisfaction in accordance with this Agreement.

**Section 9.5 Waivers.** To the extent permitted by law, the City may waive a specific breach or default by the Developer hereunder by delivering to the Developer notice of such specific waiver in writing signed by the Mayor or his assigns. Provided, however, no waiver of any default or breach by the Developer hereunder shall be implied from any delay or omission by the City to take action on account of such default, and no such express waiver shall affect any default other than the default specified in the waiver and it shall be operative only for the time and to the extent therein stated. No advance of TIF Bond Proceeds shall constitute a waiver of any of the provisions, conditions or obligations set forth herein, nor shall any advance of TIF Bond Proceeds constitute an affirmation by the City that all provisions, conditions and requirements of this Agreement have been met.

**Section 9.6 Assignment of Contracts.** Should the City terminate this Agreement as set forth herein, the City shall have the right, but not the obligation, to require the Developer to assign to the City each contract agreement for any of the Public Infrastructure Projects to be completed under this Agreement, provided (1) such assignment will be effective only after termination of the Agreement and only for the contract agreements which the City accepts by notifying the Developer and applicable contractor in writing; and (2) this assignment is subject to the prior rights of a surety, if any, obligated under any surety bonds relating to this Agreement and/or any Public Infrastructure Project. Developer shall have the right to assign this Agreement with the consent of the City, such consent not to be unreasonably withheld.

**Section 9.7 Developer's Option to Terminate.** If, through no fault of the Developer, the City wrongfully rejects or fails to approve a Disbursement Request within the timeframe set forth in Section 6.4 of this Agreement, then the Developer may, upon the expiration of 30 days

written notice to the City (hereinafter the "**Cure Period**"), terminate this Agreement if the City has not (i) approved the Disbursement Request or (ii) provided valid written explanation of the City's rejection of the Disbursement Request within the Cure Period. In addition to its rights as provided herein, Developer shall have such other remedies as are available at law or in equity as a result of any breach by the City of its obligations hereunder.

9.7.1 Late Payment Costs. If the Developer incurs additional costs following expiration of the Cure Period as a direct result of late payment of any Disbursement Request caused by the City's failure to approve or wrongful rejection of same, the Developer shall be entitled to recover such additional costs as a Public Infrastructure Cost in its next Disbursement Request, provided that if adequate funds are not available within the applicable Schedule of Values, then the City shall be liable for such additional cost. Notwithstanding the foregoing, the City shall not be liable to the Developer for any lost profits or consequential damages that may arise out of the late payment of any Disbursement Request unless due to wrongful rejection.

9.7.2 Delays to Critical Path Resulting from Late Payment. If the critical path of a Project Schedule is delayed as direct result of late payment of any Disbursement Request caused by the City's failure to approve or wrongful rejection of same, the Developer shall be entitled to an extension of time in such Project Schedule commensurate to the delay in the critical path.

## **ARTICLE X - GENERAL MATTERS**

**Section 10.1 Term.** This Agreement shall be effective as of the Effective Date and shall terminate upon the earlier to occur of (1) termination pursuant to Article IX, and (2) acceptance by the City of the final Public Infrastructure Project to be constructed by the Developer and receipt by Developer of TIF Bond Proceeds and Excess TIF Revenues as contemplated by the MOU. If the Public Infrastructure Projects have not been completed, conveyed, dedicated and accepted in full by such date, the City may declare the Developer to be in default and pursue all available legal and equitable remedies against the Developer. Nothing in this Section 10.1 shall be construed as a limitation of any other right or remedy that the City may have elsewhere under this Agreement.

**Section 10.2 City Council Legislative Discretion.** Except as limited by any Development Agreement executed between the City and Developer, the use by the City of its reasonable efforts shall in no way impair or limit the authority of the City Council to exercise its discretion in taking legislative action and shall in no way require City Council to take any legislative action. In satisfying their obligations under this Agreement, the City and the Developer shall act diligently and in a timely fashion.

**Section 10.3 Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service; (2) electronic communications, whether by telex, facsimile, telegram or other telecopy, with proof of receipt by addressee; (3) overnight courier; or (4) registered or certified first class mail, postage prepaid, return receipt requested.

To whom notice is to be given:

If to the City;                      City of Charleston  
   116 Meeting Street

Charleston, SC 29401  
ATTN: Chief Financial Officer

Department of Public Services  
75 Calhoun Street  
Charleston, South Carolina 29401  
ATTN:

With a copy to: Office of Corporation Counsel  
50 Broad Street  
Charleston, SC 29401  
ATTN: Deputy Corporation Counsel

If to Developer: Ashley River Investors, LLC  
201 Sigma Drive, Suite #400  
Summerville, SC 29483  
Attn: Mark Lewis

Ashley River, Investors, LLC  
c/o Branch Properties  
3340 Peachtree Road, NE  
Suite 600  
Atlanta, GA 03026  
Attn: Richard Lee

With a copy to: George Bullwinkel, Esq.  
Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, SC 29402

Any Party may change the address for notices to such Party by written notice to the other Parties to this Agreement. Notice given by personal service shall be effective upon the date delivered, if personally delivered, or the date of attempted delivery, if refused. Notice given by mail shall be effective on the third business day after posting. Notice by overnight courier shall be effective on the next business day following delivery of such notice to such courier. Notice given by fax shall be effective on the date of completion of the fax transmission, so long as such notice is further sent by personal service, the U.S. Mail, or overnight courier, as aforesaid.

**Section 10.4 Amendment.** The City and the Developer may, by mutual consent, agree in writing to amend the terms and conditions set forth in this Agreement and/or any exhibit attached hereto; provided, however, that Developer's successor and assigns shall have no right to amend this Agreement unless such right is expressly conveyed by Developer to such successor or assign. No purported oral amendment to this Agreement shall be binding or enforceable.

**Section 10.5 Entire Agreement.** This Agreement and the related agreements executed by the Parties simultaneously herewith set forth all agreements, understandings, and covenants between the Developer and the City relative to the subject matter hereof.

**Section 10.6 Waiver.** Waiver by the City or the Developer with respect to any breach or default under this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or the Developer.

**Section 10.7 Remedies Cumulative.** The remedies available to the Parties are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

**Section 10.8 Disclaimer.** Nothing contained in this Agreement, nor any act of the City, shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

**Section 10.9 Headings.** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

**Section 10.10 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

**Section 10.11 Severability.** If any section, subsection paragraph, sentence, clause or phrase of this Agreement or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Agreement, or any part thereof.

**Section 10.12 Governing Law.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to its conflicts of law principles.

**Section 10.13 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns to whom the rights and obligations are Specifically covered or assigned. Nothing herein shall prohibit the alienation, sale or any other transfer of all or any portion of the Property or any rights, interests or obligations therein, provided that no such alienation, sale or any other transfer of all or any portion of the Property or the rights therein shall operate to release the Developer from its obligations or liability hereunder as to that portion of the Property so transferred, without the prior written consent of the City which consent may be given or withheld in the City's sole discretion in each instance, and provided such transferee agrees to comply with the terms of this Agreement.

**Section 10.14 Force Majeure.** Neither the City nor the Developer, nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty or act of terrorism, strike, widespread shortages of construction materials, governmental (including USEPA or SCDHEC) delays, unusually adverse weather conditions such as, by way of illustration and not limitation, hurricanes, flooding, tornadoes or cyclones, unexpected environmental conditions and other material adverse events or conditions beyond the reasonable control of the party affected which in fact delay such party in discharging its obligations hereunder.

**Section 10.15 Order of Precedence.** Should there be any conflict between the provisions of this Agreement and the Indenture, the order of precedence shall be the Indenture and then this Agreement.

**Section 10.16 No Third Party Beneficiary.** This Agreement is for the sole and exclusive benefit of the City, the Developer and Developer Affiliates and their successors and assigns. No other person or entity is an intended third party beneficiary or shall have the right to enforce any of the provisions of this Agreement.

**Section 10.17 Recovery of Attorney Fees.** In the event of litigation or other legal action relating to enforcement of rights under this Agreement, the substantially prevailing party shall be entitled to recover all litigation expenses, including attorneys' fees and court costs, from the non-prevailing party.



**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first written above.

**WITNESSES:**

**CITY OF CHARLESTON, SOUTH  
CAROLINA**

\_\_\_\_\_

By: \_\_\_\_\_

John Tecklenburg, Mayor

\_\_\_\_\_

Attested to:

\_\_\_\_\_  
Vanessa Turner-Maybank, Clerk of Council

**[SIGNATURE PAGE CONTINUES ON FOLLOWING PAGE]**

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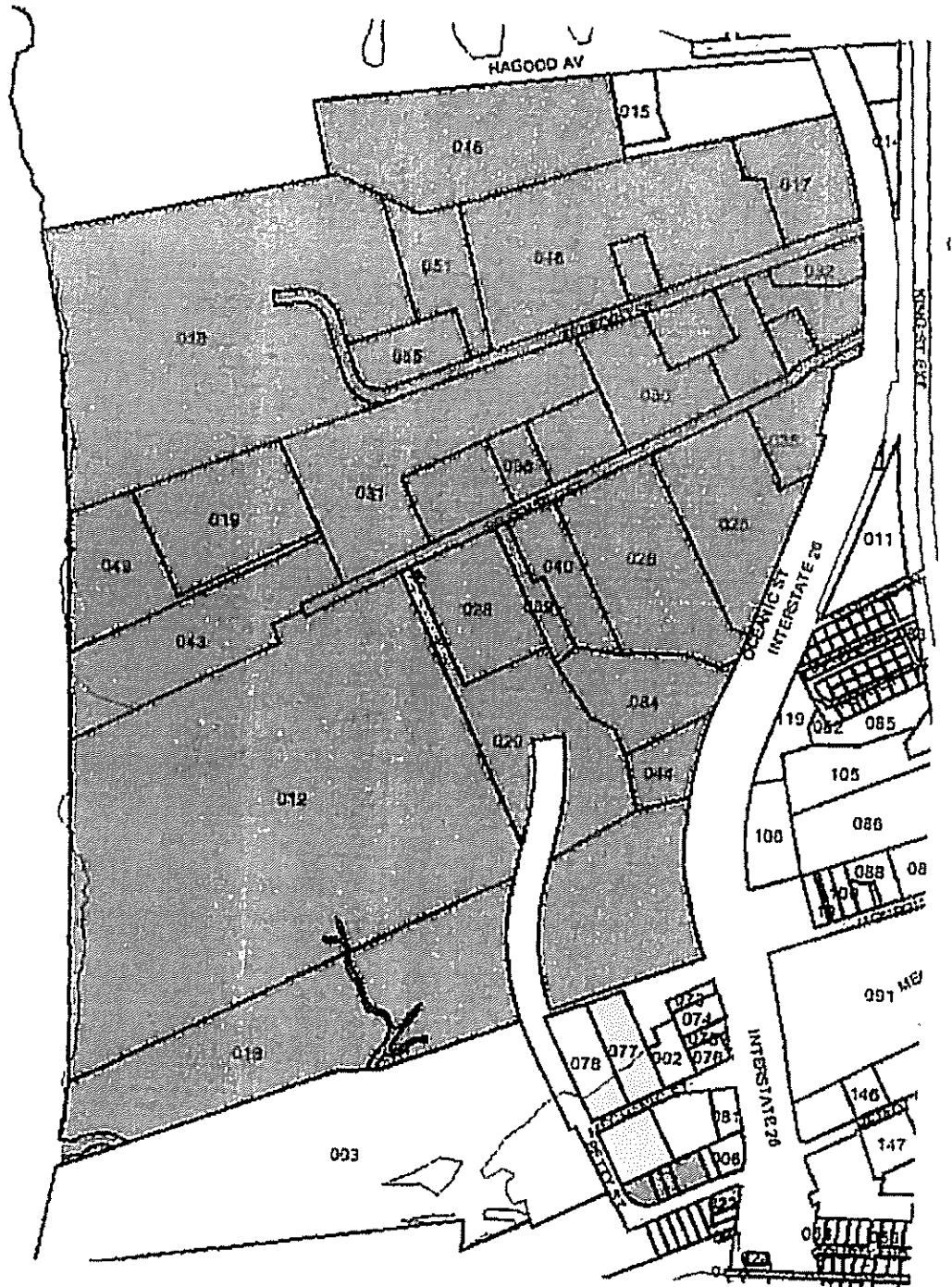
WITNESSES:

ASHLEY RIVER INVESTORS, LLC

\_\_\_\_\_  
  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Exhibit A



Tax Parcels

464-00-00-012	Ashley I, LLC
464-00-00-013	Charleston County Parks and Recreation Commission
464-00-00-025	Ashley II of Charleston, LLC
464-00-00-026	Ashley II of Charleston, LLC
464-00-00-028	Ashley II of Charleston, LLC
464-00-00-029	Ashley I, LLC
464-00-00-030	North Charleston Sewer District
464-00-00-039	Ashley II of Charleston, LLC
464-00-00-040	Ashley II of Charleston, LLC
464-00-00-044	Monrovia Union Cemetery
464-13-00-013	Ashley II of Charleston, LLC
464-13-00-012	Ashley II of Charleston, LLC
464-13-00-011	Ashley II of Charleston, LLC
464-13-00-008	Ashley II of Charleston, LLC
464-13-00-023	Ashley II of Charleston, LLC
466-00-00-016	Ashley II of Charleston, LLC
466-00-00-017	Ashley II of Charleston, LLC
466-00-00-018	Ashley II of Charleston, LLC
466-00-00-019	Ashley I, LLC
466-00-00-028	Ashley I, LLC
466-00-00-029	Ashley I, LLC
466-00-00-030	Ashley I, LLC
466-00-00-031	Ashley I, LLC
466-00-00-032	Ashley II of Charleston, LLC
466-00-00-033	Ashley II of Charleston, LLC
466-00-00-034	Ashley II of Charleston, LLC
466-00-00-035	Ashley I, LLC
466-00-00-036	Ashley I, LLC
466-00-00-037	Ashley II of Charleston, LLC
466-00-00-043	Parker Real Estate LP
466-00-00-044	Ashley II of Charleston, LLC
466-00-00-046	Ashley II of Charleston, LLC
466-00-00-049	Ashley I, LLC
466-00-00-051	Ashley II of Charleston, LLC
466-00-00-055	Robin W. Hood, II

**Exhibit B**

	<b>Cost</b>
<b>Phase 1 Projects (Current Outstanding Bond Balance)</b>	<b>10,477,038</b>
<b>Phase 2 Projects</b>	
Stormwater/Fill/Sewer (Milford South)	11,867,000
Public Infrastructure Remediation (Milford South)	1,500,000
Stormwater/Fill/Sewer (NW Phase)	1,500,000
Public Infrastructure Remediation (NW Phase)	2,380,000
Contribution to Skate Park	500,000
Construction Manager (3%)	517,410
<b>Phase 2 Projects Subtotal</b>	<b>18,264,410</b>
<b>Phase 3 (A&amp;B) Projects</b>	
Roads & Infrastructure	8,346,000
Public Parks	890,000
SC&EG Gas Regulating Station	128,000
SC&EG Power Line Relocation	55,000
Rutledge Ave Roundabout	822,000
Rutledge Ave Streetscape	100,000
King Street Improvements	1,475,000
Public Infrastructure Demolition	240,000
Construction Manager (3%)	361,680
<b>Phase 3 Projects Subtotal</b>	<b>12,417,680</b>
<b>Phase 4 Projects</b>	
Roads & Infrastructure	2,803,000
Public Parks	871,000
Public Infrastructure Demolition	56,000
Construction Manager (3%)	111,900
<b>Phase 4 Projects Subtotal</b>	<b>3,841,900</b>
<b>Phase 5 Projects</b>	
Roads & Infrastructure	3,183,000
Public Parks	1,570,000
King Street Signalization	192,000
Construction Manager (3%)	148,350
<b>Phase 5 Projects Subtotal</b>	<b>5,093,350</b>

<b>Public Works Facility<sup>1</sup></b>	<b>18,000,000</b>
<b>Phase 6 Projects</b>	
Stormwater/Fill/Sewer (NE Phase)	1,361,000
Roads & Infrastructure	-
Public Parks/Community Center	696,000
Public Infrastructure Demolition	175,000
Construction Manager (3%)	72,960
<b>Phase 6 Projects Subtotal</b>	<b>2,504,960</b>
<b>Phase 7 Projects</b>	
Parking Decks/Roads/Infrastructure/Parks <sup>2</sup>	42,790,000
<b>Phase 7 Projects Subtotal</b>	<b>42,790,000</b>
<b>Total Project Costs<sup>3,4,5</sup></b>	<b>113,389,338</b>

<sup>1</sup> A construction management fee of 5% is included in these numbers.

<sup>2</sup> A construction management fee of 3% is included in these numbers.

<sup>3</sup> Does not include capitalized interest, inflation or bond issuance costs.

<sup>4</sup> Does not include the City Project Manager fee contemplated by Section 8.1 of the Public Infrastructure Agreement

<sup>5</sup> These reimbursable costs include remediation, operation and maintenance incurred with respect to such projects.

## IMPROVEMENT PLAN FOR THE MAGNOLIA MUNICIPAL IMPROVEMENT DISTRICT

### INTRODUCTION

In adopting the Municipal Improvement Act of 1999 (the "Act"), the South Carolina General Assembly authorized cities to establish Municipal Improvement Districts within which an Improvement Plan could be implemented. An Improvement District, as defined in the Act, means any area within the municipality designated by a city council. An Improvement Plan, as defined in the Act, means an overall plan by which a city council proposes to effect improvements within an improvement district to preserve property values, prevent deterioration of urban areas, and preserve the tax base.

The Act specifically notes that such a document "includes an overall plan by which the governing body proposes to effect improvements within an improvement district in order to encourage and promote private or public development within the improvement district." By resolution considered on May 29, 2007, the Magnolia Improvement District was designated by the City Council of the City of Charleston, South Carolina (the "City Council") and the "Improvement Plan for the Magnolia Municipal Improvement District," an Improvement Plan as contemplated by the Act, for the Magnolia Municipal Improvement District (the "Improvement District") was approved by City Council. By ordinance adopted July 17, 2007 (the "MID Ordinance"), City Council established the Improvement District. This document constitutes the amended "Improvement Plan for the Magnolia Municipal Improvement District." As approved by ordinance adopted by City Council on August 18, 2015.

#### Background

Publicly-owned infrastructure improvements of the type described at Section 5-37-20(2) of the Act are to occur on approximately 210 acres of former industrial sites located along the Ashley River on the upper peninsula of Charleston, now known generally as "Magnolia." The collection of real property in the Improvement District is the result of an assemblage of properties begun in 2002 by Ashley I, LLC and Ashley II of Charleston, LLC ("Ashley") in close cooperation with the City of Charleston, South Carolina (the "City").

The goals for this area include improvements to be enjoyed by those neighborhoods directly impacted by Magnolia as well as all who will participate in activities in this revitalized part of the City as a result of:

- 1) Reclamation of industrial land for new residential and commercial development on the upper peninsula of the City;
- 2) Accommodation of growth in the region without contributing to suburban sprawl, and,
- 3) Construction of public infrastructure improvements, including but not limited to, water, stormwater and sanitary sewer facilities, which are expected to serve as a catalyst for dynamic growth of new jobs, preservation and enhancement of property values and an improved quality of life.

Beginning in 2003, a number of charrettes and less formal meetings were held in nearby neighborhoods to collect the thoughts, wishes and suggestions of both citizens and urban design professionals as to the appropriate means of redeveloping the Improvement District. The early sessions resulted in the adoption of the "Charleston Neck Plan" by the City Council on December 2003 (the "2003

Neck Plan"). Regular updates and meetings have occurred in the neighborhoods over the intervening periods.

The 2003 Neck Plan envisioned the area that makes up the Improvement District as a carefully planned, mixed-use "new urban" style community: respectful of history, of the environment and of the existing nearby neighborhoods, while delivering new residential dwelling units (suitable for citizens of all economic means), new commercial and retail opportunities, substantial green spaces, and waterfront parks accessible to the public. In addition, the 2003 Neck Plan called for significant upgrades to infrastructure on the upper peninsula, including a rationalization of the road system and the implementation of public transit systems.

In 2004, to support the ambitious redevelopment program, the City proposed the creation of a Tax Increment Financing District (the "TIF District"), which the City Council enacted by ordinance adopted December 21, 2004 (the "TIF Ordinance"), enabling the future issuance of tax increment finance borrowings. Creation of the TIF District was a recognition that public support would be necessary to make the project economically feasible, since the overall cost of the redevelopment would be greater than that generally applicable to "green-field" developments, due to

- the time and cost involved in putting the assemblage together (37 separate negotiations and acquisitions);
- the need to relocate businesses operating within the Improvement District to other sites (NOTE: no relocations of residents will be occurring within the Improvement District);
- the cost of remediation of past pollution to make the land suitable for re-use in urban, residential and commercial contexts, and,
- the cost of replacing or upgrading public infrastructure in the Improvement District, including more than 60 acres of public improvements, with miles of new streets and water and sewer lines, and a number of newly created parks and waterfront areas accessible to the public.

The Redevelopment Plan is attached to the TIF Ordinance creating the TIF District and describes the expectation that certain public improvements will be funded by revenues generated by the TIF District or will be financed by borrowings secured by a pledge of revenues generated by the TIF District.

The entirety of the Property is situated within the TIF District. The City Council amended the TIF Ordinance by an ordinance approved on July 8, 2014 to among other things extend the term of the TIF District until 2040.

The TIF Ordinance and the MID Ordinance, as currently amended and to be amended in the future, describe certain public infrastructure improvements to be undertaken within the Improvement District and therefore within the TIF District.



## THE 2015 IMPROVEMENT PLAN

Description of Proposed Improvements; Estimated Private Sector Investment

The following improvements, all of which will be owned by the City or other public entity, are proposed to be accomplished within or near the Improvement District:

1. Construction of bridge, boulevards, traffic circle, surrounding streets and internal streets located within and near the Improvement District;
2. Construction of parks and other public spaces within the Improvement District;
3. Construction and relocation of utilities, including storm water and sewer management, including a force main;
4. Acquisition of land for civic and public uses;
5. Construction of a public garage facility also referred to as a public works facility to replace that currently in use;
6. Demolition related to construction of roads, parks and buildings;
7. Other public improvements including but not limited to environmental clean-up (including testing and treatment), parking decks, relocation of communication towers, community centers and a boat basin.

Such publicly owned improvements are expected to be provided within a 25 year period. Such publicly owned improvements are expected to result in private sector investment, potentially including up to 4,100 new residential units to be created over a period of between 10 and 25 years. In addition, private sector investment may include multiple hotels and up to 1.5 million square feet of commercial and office space. In addition, approximately 22 acres of publicly owned open space is contemplated.

The total estimated cost of additional improvements to be built (excluding certain improvements already provided) is \$102,912,300 in current dollars.

Bond Issuances; Public Infrastructure Agreement; Timing and Amounts

The improvements specified above are all expected to be funded with tax increment revenues, either directly or through bond issuances supported by tax increment revenues. Proceeds from the expected bond issuances may only be used to pay for items that will be owned by the public (see "Description of Proposed Improvements" above). Prior to the issuance of any bonds, a formal Public Infrastructure Agreement to be ratified by City Council, will be entered into by the City and Ashley River Investors, LLC or its designee (Ashley River Investors), setting forth a list of funding priorities and other administrative details.

Tax increment financings are expected provide the majority of the funding needed for the improvements. Tax increment revenues generated by the TIF District are intended to be the primary source for the payment of debt service on the tax increment financings. Multiple series of tax increment financings are expected, including multiple bond issuances from 2015 through 2019 for improvements that are estimated to cost approximately \$39.6 million in current dollars.

Under certain circumstances as set forth in the Public Infrastructure Agreement, a portion of the improvements are expected be funded by tax increment finance bonds that are secondarily secured by special assessments authorized under the Act. The estimated sources and uses for the expected future financings secured in part by special assessments are shown in the table below.

**Table 1 – Estimated Sources and Uses**

<b>Sources of funds:</b>	
Total bond proceeds	\$63,560,000
Interest earned on bond proceeds	\$114,853
<b>Total sources of funds</b>	<b>\$63,674,853</b>
<b>Uses of funds:</b>	
Public improvements	\$42,489,828
Issuance costs	\$900,000
Underwriter's discount	\$1,272,951
Capitalized interest	\$12,654,272
Reserve fund	\$6,356,000
Rounding	\$1,803
<b>Total uses of funds</b>	<b>\$63,674,853</b>

The amounts shown in the table above exclude the City's outstanding 2013 Charleston Neck Redevelopment Area tax increment financing.

To the extent that tax increment revenues and other available sources of funds are insufficient to fund the debt service on the bond issuances that are secured by special assessments, then annual special assessments may be billed to real property within the Improvement District on which special assessments have been levied, all in accordance with the governing documents of the special assessments.

While the financings will be effected under the authority of the City, the City will not be placed at risk for any debt service on the financings at any time, or for any reason.

**Identification of Tax Parcels in the Improvement District**

The Improvement District currently consists of thirty-five tax parcels as shown in Table 2 below. A map of the parcels listed in Table 2 is shown in Appendix A.

**Table 2 – Listing of Tax Parcels in the Improvement District**

464-00-00-012	Ashley I, LLC
464-00-00-013	Charleston County Parks and Recreation Commission
464-00-00-025	Ashley II of Charleston, LLC
464-00-00-026	Ashley II of Charleston, LLC
464-00-00-028	Ashley II of Charleston, LLC

EXHIBIT C

464-00-00-029	Ashley I, LLC
464-00-00-030	North Charleston Sewer District
464-00-00-039	Ashley II of Charleston, LLC
464-00-00-040	Ashley II of Charleston, LLC
464-00-00-044	Monrovia Union Cemetery
464-13-00-013	Ashley II of Charleston, LLC
464-13-00-012	Ashley II of Charleston, LLC
464-13-00-011	Ashley II of Charleston, LLC
464-13-00-008	Ashley II of Charleston, LLC
464-13-00-023	Ashley II of Charleston, LLC
466-00-00-016	Ashley II of Charleston, LLC
466-00-00-017	Ashley II of Charleston, LLC
466-00-00-018	Ashley II of Charleston, LLC
466-00-00-019	Ashley I, LLC
466-00-00-028	Ashley I, LLC
466-00-00-029	Ashley I, LLC
466-00-00-030	Ashley I, LLC
466-00-00-031	Ashley I, LLC
466-00-00-032	Ashley II of Charleston, LLC
466-00-00-033	Ashley II of Charleston, LLC
466-00-00-034	Ashley II of Charleston, LLC
466-00-00-035	Ashley I, LLC
466-00-00-036	Ashley I, LLC
466-00-00-037	Ashley II of Charleston, LLC
466-00-00-043	Parker Real Estate LP
466-00-00-044	Ashley II of Charleston, LLC
466-00-00-046	Ashley II of Charleston, LLC
466-00-00-049	Ashley I, LLC
466-00-00-051	Ashley II of Charleston, LLC
466-00-00-055	Robin W. Hood, II

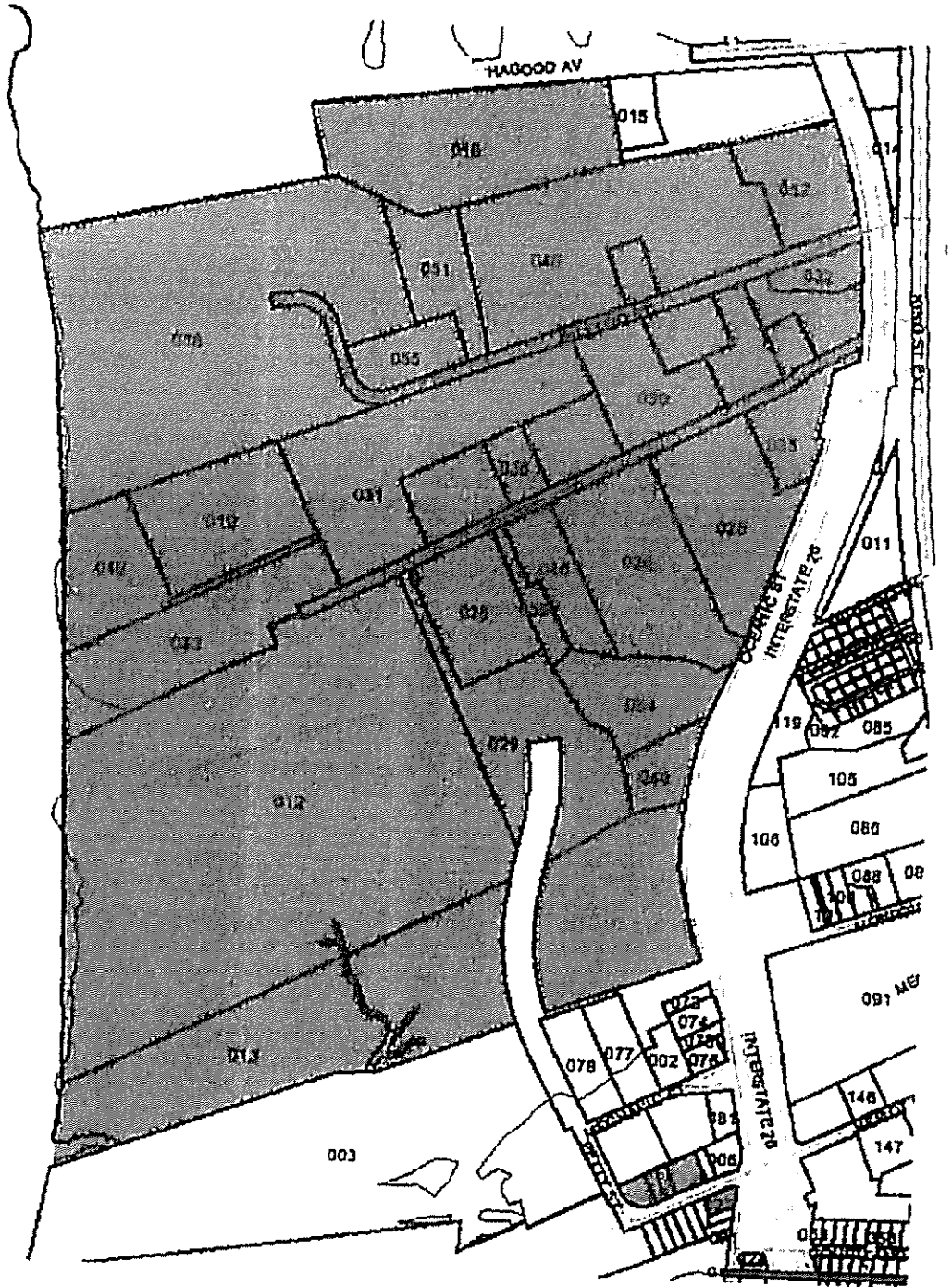
Assessment Methodology Description

Assessments have been imposed by City Council upon parcels in the Improvement District based upon the expected development uses on the parcel and the estimated value of the expected development use, in order to fairly reflect the advantage derived from the improvements by each of the individual parcels. The Improvement District initially consists of multiple parcels on which all development is expected to occur. As these parcels are combined and subdivided, the assessments will be reallocated to the new parcels on the basis of the development expected to occur on the parcels and the approved assessment methodology.

Unanimous Consent of owners of the Parcels to which the MID Assessments Apply

It is specifically recognized that the owners of the Parcels to which the Assessments apply have unanimously requested the amendments made by Ordinance of City Council adopted August 18, 2015, which amendments include those set forth herein. It is further specifically recognized that such request constitutes consent in writing of "all of the owners of property upon which the assessment is to be levied to the imposition of such assessment" and as such the provisions of Section 5-37-120 of the Act are deemed satisfied.

Appendix A  
(Improvement Plan Tax Parcels Map)



**EXHIBIT D**

**PROJECT CERTIFICATION DISBURSEMENT REQUEST**

Date: \_\_\_\_\_

City of Charleston

Project Name: \_\_\_\_\_

Permit #: \_\_\_\_\_

Disbursement Request #: \_\_\_\_\_

\_\_\_\_\_ is currently monitoring construction and has reviewed the enclosed pay request application # \_\_\_\_\_, dated \_\_\_\_\_. I, as a registered professional, state to the best of my information, knowledge, and belief that the disbursement request for the above referenced project has been completed in general accordance with the approved plans and specifications. This is based upon periodic observations of construction and an inspection for design compliance by me or a representative of my office who is under my supervision. We recommend a disbursement of \$\_\_\_\_\_ to \_\_\_\_\_.

We request that the City provide written approval for the above mention disbursement request as stated in the Public Infrastructure Improvement Purchase Agreement.

Registered Professional: \_\_\_\_\_  
Printed Name Signature

S.C. Registration #: \_\_\_\_\_

Company Name: \_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING  
AND AGREEMENT BETWEEN  
THE CITY OF CHARLESTON, SOUTH CAROLINA  
AND  
ASHLEY RIVER INVESTORS, LLC**

This Memorandum of Understanding and Agreement ("Agreement") is made and entered into at Charleston, South Carolina as of the \_\_\_\_ day of July, 2014 by and between the City of Charleston, South Carolina (the "City") and Ashley River Investors, LLC a South Carolina limited liability company ("ARI").

**RECITALS**

WHEREAS, the City established the Charleston Neck Redevelopment Project Area (the "TIF District") consisting of approximately 1,347 acres pursuant to an ordinance adopted on December 21, 2004 ("TIF Ordinance"); and

WHEREAS, the City established the Magnolia Improvement District (the "District") consisting of approximately 210 acres located within the TIF District pursuant to an ordinance adopted on July 17, 2007 (the "MID Ordinance"); and

WHEREAS, the TIF Ordinance and the MID Ordinance describe certain public infrastructure improvements (the "Improvements") to be undertaken within the District and therefore within the TIF District; and

WHEREAS, the TIF Ordinance and the MID Ordinance describe revenue bonds to be issued to defray the cost of a portion of such Improvements ("TIF Bonds" and "MID Bonds," respectively); and

WHEREAS, the TIF Bonds are expected to be secured by TIF Revenues, as defined herein, as well as at ARI's election, by assessments in the District (the "MID Assessments") established by an ordinance ("Assessment Ordinance") adopted October 9, 2007; and

WHEREAS, Ashley I, LLC and Ashley II of Charleston, LLC (collectively, the "2007 Developers") previously proposed a mixed-use redevelopment project ("Magnolia Redevelopment Project") within the District and therefore within the TIF District, such property more specifically described in the MID Ordinance ("Magnolia Property"); and

WHEREAS, the MID Assessments were imposed and the MID Bonds anticipated to be issued at the request of the 2007 Developers; and

WHEREAS, in addition to securing MID Bonds, the MID Assessments were imposed to additionally secure the TIF Bonds; and

WHEREAS, in an attempt to insure their timely construction to coincide with the anticipated commencement of the private sector investment in and construction of the Magnolia Redevelopment Project, the acquisition and construction of certain of the Improvements was governed by the Development and Public Infrastructure Improvements Purchase Agreement dated as of December 1, 2007, between the City and the 2007 Developers (the "2007 Purchase Agreement"); and

WHEREAS, in 2011 after completion of only a portion of the Improvements, the 2007 Developers advised the City that due in part to the then current downturn in the economy, they were unable to continue to carry out their duties to the City which commenced in 2007; and

WHEREAS, by agreement dated April 20, 2011, the City and the 2007 Developers terminated all rights of the 2007 Developers in the 2007 Purchase Agreement and certain other agreements as described therein; and

WHEREAS, in connection with their duties to the City and their anticipated private sector investment, the 2007 Developers had entered into a promissory note secured by a mortgage (the "Promissory Note") on all but two parcels of the Magnolia Property; and

WHEREAS, the 2007 Developers defaulted on the Promissory Note, after which Magnolia/ARC Lender, LLC (the "Magnolia/ARC") purchased the same; and

WHEREAS, the Promissory Note remains in default as a result of which Magnolia/ARC intends to foreclose upon or otherwise acquire title to all or a substantial portion of the Magnolia Property owned by the 2007 Developers; and

WHEREAS, ARI has an option to acquire all or portions of the Magnolia Property from Magnolia/ARC; and

WHEREAS, upon such acquisition, ARI intends to undertake this private sector development and construction of the Magnolia Redevelopment Project (as modified); and

WHEREAS, continued redevelopment of the Magnolia Property by both the public and the private sector is beneficial to the adjoining and nearby communities and to the future growth of the City as first described in the TIF Ordinance; and

WHEREAS, prior to ARI exercising such option and thereafter undertaking development and construction of the Magnolia Redevelopment Project, the City and ARI have determined to address certain of the Improvements contained in the 2007 Purchase Agreement in an attempt to once again insure their timely construction to coincide with the anticipated commencement of the private sector investment in and development by ARI in the Magnolia Redevelopment Project; and

WHEREAS, certain of the remaining Improvements to be undertaken in and outside of the District include a system of roads, parks, streets, sidewalks, drainage improvements, environmental remediation, utilities, a public works facility to replace the existing facility at



Milford Street (the "Replacement Public Works Facility") and other public infrastructure necessary for the Magnolia Redevelopment Project and beneficial to the TIF District; and

WHEREAS, in conjunction with the ongoing implementation of the Magnolia Redevelopment Project, the City (either on its own behalf or through the Developer) will undertake those Improvements set forth on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the 2007 Purchase Agreement provided the Replacement Public Works Facility would be constructed with MID Only Bonds; and

WHEREAS, ARI has requested that in lieu of MID Only Bonds, the Replacement Public Works Facility be funded with the proceeds of TIF Bonds expected to be secured by TIF Revenues; and

WHEREAS, the City may contract with ARI in connection with the remediation, engineering, design, permitting, construction and equipping of such Improvements to be funded in part from the proceeds available from TIF Bonds ("TIF Bond Proceeds") as well as tax increment revenues generated by the TIF District ("TIF Revenues"); and

WHEREAS, such contract shall provide for reimbursement of funds advanced by ARI for the Improvements; and

WHEREAS, ARI has requested that in the event it acquires all or portions of the Magnolia Property, the MID Ordinance and the Assessment Ordinance be amended; and

WHEREAS, in order for the City and ARI to develop successfully their respective portions of the Magnolia Redevelopment Project, including the Improvements, it is necessary that the certain agreements and undertakings in the MID Ordinance and the Assessment Ordinance and related ordinances heretofore passed by the City Council be amended in accordance with this Agreement; and

WHEREAS, previously \$140 million in TIF Bond Proceeds, secured by TIF Revenues and MID Assessments were anticipated to be used for public infrastructure improvements within the District to serve as a catalyst to the anticipated private sector investment as set forth in the 2007 Purchase Agreement; and

WHEREAS, the completion of the Magnolia Redevelopment Project is dependent upon funding of Improvements from the TIF Bond Proceeds and TIF Revenues; and

WHEREAS, a similar agreement is now proposed with the understanding that the allocation of such TIF Bond Proceeds and TIF Revenues will be reduced to reflect the lower total costs set forth in Article II below and the provision for MID Only Bonds will be eliminated.

NOW THEREFORE, pursuant to the above recitations, and in consideration of the mutual covenants and promises of the parties contained herein, the parties agree as follows:

## ARTICLE I: RECITALS

The foregoing Recitals are incorporated into and made a part of this Agreement.

## ARTICLE II: TIF BONDS; TIF REVENUES

1. It is recognized that the principal amount of future issues of TIF Bonds is dependent upon such factors as the income stream securing such borrowings as well as interest rates then prevailing. To the extent that TIF Bond Proceeds together with TIF Revenues permit, such sums shall be expended in the following order of priority:
  - (i) the City's existing TIF Bond, in the outstanding principal amount of \$12,100,000 ("Outstanding TIF Bond") shall be paid as required by its terms. While the Outstanding TIF Bond is not subject to prepayment, the City agrees to explore prepayment with the holder thereof and, if feasible and financially neutral to the City, the first issuance of TIF Bonds shall in addition to funding certain of the Improvements may also be used to pay off the Outstanding TIF Bond;
  - (ii) the next TIF Revenues and TIF Bond Proceeds, not to exceed \$39 million (net of bond issuance costs, capitalized interest and reserves and the Outstanding TIF Bond), will be allocated to Improvements within the District;
  - (iii) the next TIF Revenues and TIF Bond Proceeds, not to exceed \$18 million (net of bond issuance costs, capitalized interest and reserves), will be allocated to construction of the Replacement Public Works Facility, construction of which, subject to the provision of Article II, paragraph 4, will commence no later than December 31, 2018; and
  - (iv) the next TIF Revenues and TIF Bond Proceeds, not to exceed \$41 million (net of bond issuance costs, capitalized interest and reserves), will be available to fund additional public capital improvements within the District.
2. With respect to costs incurred in the future by ARI, its affiliates and assigns (hereinafter "ARI Parties"), for Improvements within the District, and so long as consistent with the allocations established in the preceding section, and so long as the Improvements funded by such costs, including the budgets, have been approved by the City, ARI Parties shall have the right to obtain reimbursement (or the City may elect to pay these costs directly) from TIF Revenues if excess funds from TIF Revenues exist beyond that necessary to support required annual payments for outstanding TIF Bonds and required debt coverage ratio if any, beyond debt service reserve (hereinafter "Excess TIF Revenue"). Such reimbursement rights shall be reflected in a future Reimbursement Ordinance.

3. By ordinance adopted July 15, 2014, the maximum term of obligations to be issued under the Redevelopment Plan set forth in the Ordinance was amended to extend the term from December 21, 2029 to December 21, 2039.
4. Assuming a successful financing of such a borrowing and subject to the priority established in Article II, paragraph 1(iii), ARI shall construct the Replacement Public Works Facility using TIF Bond proceeds and/or TIF Revenues. ARI's obligation to commence construction of such facility no later than December 31, 2018 is dependent upon such successful financing.

#### ARTICLE III: MID ONLY BONDS/MID ASSESSMENTS

1. The City acknowledges that MID only Bonds are no longer anticipated to be necessary, and therefore ARI has requested that the right to issue MID only Bonds with respect to the Improvement District as contemplated by the Assessment Ordinance be terminated. The City agrees with this request. Correspondingly, Assessment A in the Assessment Ordinance which serves as a repayment mechanism for the MID only Bonds is also terminated. These changes shall be reflected and will be effective upon adoption of an amended MID Ordinance and Assessment Ordinance.
2. ARI has recommended that at present the MID Assessments contemplated by Assessment B as set forth in the Assessment Ordinance continue to be available at ARI's option as additional collateral for one or more of the TIF Bond issuances. This MID Assessment shall be used as a potential repayment mechanism for and as additional collateral for individual TIF Bond issuances only upon ARI's request. The calculation of the portion of Assessment B allocable to each individual parcel shall be modified in such manner as those parcel owners then responsible for payment of such MID Assessments shall request in writing and will be effective upon adoption of an amended MID Ordinance and Assessment Ordinance.
3. Any amounts actually paid by ARI Parties pursuant to the MID Assessment in order to fund debt service on the TIF Bonds shall be reimbursed from first available TIF Bond Proceeds and/or Excess TIF Revenue.

#### ARTICLE IV: REPLACEMENT PUBLIC WORKS FACILITY

1. The Parties shall work together in good faith in anticipation of ARI commencing construction of the Replacement Public Works Facility in accordance with the plans attached as Exhibit B and such changes or modifications as shall be agreed to by the Parties by no later than December 31, 2018, which date is dependent upon a successful financing as described above and below.
2. The costs of the Replacement Public Works Facility shall be funded by TIF Bond Proceeds in the priority and amount established in paragraph 1(iii) of Article II. As set

forth in Article III, paragraph 1 above, such TIF Bonds shall be secured by TIF Revenues only and not by MID Only Bonds or MID Assessments, provided, as set forth in Article III, paragraph 2, the MID Assessment may be used as a potential repayment mechanism for and as additional collateral for TIF Bonds issued for the Replacement Public Works Facility. Any additional cost for the Replacement Public Works Facility after expenditure of funds necessary to construct the facility in accordance with the plans set forth on Exhibit B (but such costs not to exceed \$18 million as described in paragraph 1(iii) of Article II) shall be borne by the City separate and apart from TIF Bond proceeds. ARI may at its election construct the Replacement Public Works Facility in advance of TIF Bond Proceeds being available. If such funds are advanced by ARI to construct the Replacement Public Works Facility, then such funds shall be reimbursed to the ARI in the priority as established in Article II, Paragraph 1 (iii). In addition, ARI may terminate the current lease dated December 19, 2008 between the City of Charleston and Ashley II of Charleston, LLC by providing written notice thereof upon issuance of a certificate of occupancy for the Replacement Public Works Facility, such termination to be effective 45 days after such written notice.

3. The City and ARI shall work together to "value engineer" the construction of the Replacement Public Works Facility in order to minimize costs.
4. The "not to exceed" cost of \$18 million for the Replacement Public Works Facility (as set forth in Article II, paragraph 1(iii)) shall increase at an annualized rate of 3% beginning on January 1, 2015 and continuing until completion of the Public Works Facility. Similarly, the reimbursable costs of the Improvements contemplated in Article II, paragraphs 1(ii) and 1(iv), shall increase at an annualized rate of 3% annually beginning January 1, 2015 and continuing until completion of such Improvements, and the "not to exceed" reimbursable costs of \$39 million and \$41 million as set forth in Article II, paragraph 1 (ii) and 1(iv) shall increase by the same annualized 3% amount beginning January 1, 2015.

#### ARTICLE V: OTHER MATERIAL PROVISIONS

1. Any dispute which arises under or with respect to this Agreement will be in the first instance be subject to informal negotiations between the undersigned parties. The period of informal negotiations will not exceed twenty (20) calendar days from the time the dispute arises unless that period is extended by a written agreement of the parties to the dispute. The dispute will be considered to have arisen when one party sends to the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations, non-binding mediation may be invoked by either party by written notice to the other. If non-binding mediation is invoked, each party shall separately set out the nature of the dispute with a proposal for resolution in a letter submitted to a mutually agreed upon third party mediator.
2. All notices or other communications required or permitted under this Agreement shall be in writing directed to a party at its address set forth below. A party may

designate a new address by written notice to the other party. All notices shall be effective and be deemed delivered upon receipt as evidenced by a signed certified mail receipt, signed overnight delivery receipt or signed acceptance of hand delivery receipt.

City: Chief Financial Officer  
City of Charleston  
116 Meeting Street  
Charleston, SC 29401

ARI Ashley River Investors, LLC  
201 Sigma Drive, Suite #400  
Summerville, SC 29483  
Attn: Kenneth T. Seeger  
Telephone No: (843) 851-4603

3. This Agreement (including any attachments and any documents incorporated herein by reference) constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection herewith. No interpretation, modification, termination or waiver of any provision of or default pursuant to this Agreement shall be binding upon a party unless in writing and signed by the party against whom enforcement is sought. All parties have participated in the preparation of this Agreement and have received advice of legal counsel, consequently this Agreement shall not be construed against either party based on the identity of the drafter of this Agreement.
4. Except as specifically provided herein to the contrary ARI and the City agree that this Agreement is for their mutual benefit and is not intended and does not create any separate or independent rights or benefits for third parties.
5. Except as specifically provided herein to the contrary, nothing herein shall waive the powers which The City has under existing law or the rights of ARI to contest such powers.
6. This Agreement and the legal relationship between the parties shall be governed by and construed in accordance with the laws of the State of South Carolina.
7. This Agreement may be amended only by the written agreement of the parties hereto executed by all parties to this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF the parties have caused their authorized representatives to execute this Agreement and set their hands and seals as of the date first written above.

**CITY OF CHARLESTON**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ASHLEY RIVER INVESTORS, LLC,  
A South Carolina limited liability company**

By: \_\_\_\_\_  
Kenneth T. Seeger

Its: Authorized Representative

Date: July \_\_, 2014

Exhibit F

AIA<sup>®</sup> Document A312<sup>™</sup> - 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

" " "

" "

SURETY:

(Name, legal status and principal place of business)

" " "

" "

OWNER:

(Name, legal status and address)

" " "

" "

CONSTRUCTION CONTRACT

Date: " "

Amount: \$ " "

Description:

(Name and location)

"100"

" "

BOND

Date:

(Not earlier than Construction Contract Date)

" "

Amount: \$ " "

Modifications to this Bond:

☐ " " "

None

☐ " " "

See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature: \_\_\_\_\_

Name and " " "

Title:

Signature: \_\_\_\_\_

Name and " " "

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY) Name, address and telephone)

AGENT or BROKER:

" "

" "

" "

" "

" "

" "

" "

" "

" "

" "

ADDITIONS AND DELETIONS

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form that is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

ELECTRONIC COPYING of any portion of this AIA Document to another electronic file is prohibited and constitutes a violation of copyright law as set forth in the terms of this document.







EXHIBIT G

FORM OF AFFIDAVIT REGARDING TITLE OF ACCESS

STATE OF SOUTH CAROLINA	)	
	)	DEVELOPER'S AFFIDAVIT
COUNTY OF CHARLESTON	)	

Property:

THE UNDERSIGNED owner, by its authorized agent, after first being duly sworn, says under oath the following, to the best of its actual knowledge.

1. That the undersigned currently has title to or a valid easement over or other valid right to perform work on that certain real property as more particularly described in the attached Exhibit A subject to all matters of record.

OWNER:

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

SWORN to and subscribed before  
me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

" "

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

CONTRACTOR AS PRINCIPAL

SURETY

Company:

*(Corporate Seal)*

Company:

*(Corporate Seal)*

Signature:

Name and Title

Address

" " "

" "

Signature

Name and Title

Address

" " "

" "

d.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

TO: Real Estate Committee DATE: August 15, 2017

FROM: Frances Cantwell DEPT: BFRC

ADDRESS: Magnolia Development

Multiple parcels totaling approximately 182 acres of real property west of the King

TMS: Street Extension

PROPERTY OWNER: Multiple

ACTION REQUEST: Request approval for the Mayor to execute the First Amendment to Development Agreement governing the Magnolia development.

**ORDINANCE:** Is an ordinance required? Yes ☒ No ☐

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<b><u>Signature</u></b>	<b><u>Attachments</u></b>
Department Head		<input type="checkbox"/>
Legal Department	<u>Frances J Cantwell</u>	<input checked="" type="checkbox"/>
Chief Financial Officer	<u>Amy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management	<u>William Carducci</u>	<input checked="" type="checkbox"/>
		<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☐

If yes, was funding previously approved?\* Yes ☐ No ☐

\*If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

**\*Commercial Property and Community & Housing Development have an additional form.**

**COMMERCIAL REAL ESTATE FORM**

TO: Real Estate Committee DATE: August 16, 2017

FROM: Frances Cantwell DEPT: BFRC

ADDRESS: Magnolia Development

Multiple parcels totaling approximately 182 acres of real property west of the King

TMS: Street Extension

PROPERTY OWNER: Multiple

ACTION REQUEST: Request approval for the Mayor to execute the First Amendment to Development Agreement governing the Magnolia development.

**ORDINANCE:** Is an ordinance required? Yes ☒ No ☐

**ACTION:** What action is being taken on the Property mentioned?

<input type="checkbox"/>	<b>ACQUISITION</b>	Seller (Property Owner)	Purchaser
<input type="checkbox"/>	<b>DONATION/TRANSFER</b>		
	Donated By:		
<input type="checkbox"/>	<b>FORECLOSURE</b>		
	Terms:		
<input type="checkbox"/>	<b>PURCHASE</b>		
	Terms:		
<input type="checkbox"/>	<b>CONDEMNATION</b>		
	Terms:		
<input type="checkbox"/>	<b>OTHER</b>		
	Terms:		

<input type="checkbox"/>	<b>SALE</b>	Seller (Property Owner)	Purchaser
<input type="checkbox"/>	<b>NON-PROFIT ORG, please name</b>		
	Terms:		
<input type="checkbox"/>	<b>OTHER</b>		
	Terms:		

<input type="checkbox"/>	<b>EASEMENT</b>	Grantor (Property Owner)	Grantee
<input type="checkbox"/>	<b>PERMANENT</b>		
	Terms:		

## COMMERCIAL REAL ESTATE FORM

☐ **TEMPORARY**

Terms: \_\_\_\_\_

☐

**LEASE**

Lessor: \_\_\_\_\_

Lessee: \_\_\_\_\_

☐ **INITIAL**

Terms: \_\_\_\_\_

☐ **RENEWAL**

Terms: \_\_\_\_\_

☐ **AMENDMENT**

Terms: \_\_\_\_\_

☐

**Improvement of Property**

Owner: \_\_\_\_\_

Multiple

The Amendment clarifies and makes parties to the agreement the current corporate entities that own the property subject to the Agreement, substitutes a new Exhibit C to the Development Agreement to update the project schedule and substitutes a new Exhibit H to the Development Agreement, replacing the existing Public Improvements Infrastructure Agreement with the Amended and Restate Agreement.

Terms: \_\_\_\_\_

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

**Results:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Director Real Estate Management**

**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

**NEED:** Identify any critical time constraint(s).



Ratification  
Number \_\_\_\_\_

## AN ORDINANCE

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND ASHLEY RIVER INVESTORS, LLC, ST. MATTHEWS LUTHERAN CHURCH AND THE BISHOP OF CHARLESTON PERTAINING TO LANDS LOCATED IN UPPER PENINSULA AREA OF THE CITY COMPRISING APPROXIMATELY 326 ACRES AND BEARING CHARLESTON COUNTY TAX MAP NUMBERS 464-00-00-012, 464-00-00-029, 466-00-00-019, 466-00-00-028, 466-00-00-029, 466-00-00-030, 466-00-00-031, 466-00-00-035, 466-00-00-036, 466-00-00-049, 464-00-00-025, 464-00-00-026, 464-00-00-028, 464-00-00-039, 464-00-00-040, 464-13-00-013, 464-13-00-012, 464-13-00-011, 464-00-00-008, 464-13-00-023, 466-00-00-016, 466-00-00-017, 466-00-00-018, 466-00-00-032, 466-00-00-033, 466-00-00-034, 466-00-00-037, 466-00-00-044, 466-00-00-046, 466-00-00-051, 460-00-00-002, 466-00-00-021, 464-14-00-136 AND 464-00-00-019.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute on behalf of the City a First Amendment to the Development Agreement between the City and Ashley River Investors, LLC, St. Matthews Lutheran Church and the Bishop of Charleston pertaining to lands located in the upper Peninsula area of the City comprising approximately 326 acres and bearing Charleston County Tax Map Numbers 464-00-00-012, 464-00-00-029, 466-00-00-019, 466-00-00-028, 466-00-00-029, 466-00-00-030, 466-00-00-031, 466-00-00-035, 466-00-00-036, 466-00-00-049, 464-00-00-025, 464-00-00-026, 464-00-00-028, 464-00-00-039, 464-00-00-040, 464-13-00-013, 464-13-00-012, 464-13-00-011, 464-00-00-008, 464-13-00-023, 466-00-00-016, 466-00-00-017, 466-00-00-018, 466-00-00-032, 466-00-00-033, 466-00-00-034, 466-00-00-037, 466-00-00-044, 466-00-00-046, 466-00-00-051, 460-00-00-002, 466-00-00-021, 464-14-00-136 AND 464-00-00-019, a copy of said First Amendment to Development Agreement being attached to this Ordinance as Exhibit A and made a part hereof.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_ day of  
\_\_\_\_\_ in the Year of Our Lord, 20\_\_,  
and in the \_\_\_\_<sup>th</sup> Year of the Independence of  
the United States of America

\_\_\_\_\_  
John J. Tecklenburg, Mayor

ATTEST:

\_\_\_\_\_  
Vanessa Turner Maybank,  
Clerk of Council



## **FIRST AMENDMENT TO THE MAGNOLIA DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO THE MAGNOLIA DEVELOPMENT AGREEMENT (this "First Amendment") is made and entered into to be effective as of \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Charleston, a political subdivision of the State of South Carolina (the "City"); Ashley River Investors, LLC, a South Carolina limited liability company ("Ashley River"); Ashley I, LLC, a South Carolina limited liability company ("Ashley I"); Ashley II of Charleston, LLC, a South Carolina limited liability company ("Ashley II"); and the following affiliates or subsidiaries of Ashley River, all of which are South Carolina limited liability companies: Ashley River Investors I (Core Sound), LLC; Ashley River Investors III (Ashepool), LLC; Ashley River Investors VI (Heriot St.), LLC; Ashley River Investors VII (Koppers), LLC; and Ashley River Investors IX (CPW), LLC (collectively, the "ARI Affiliates").

### **RECITALS:**

WHEREAS, on or about January 16, 2016, the City and Ashley River, St. Matthews Lutheran Church, and the Bishop of Charleston entered into that certain Magnolia Development Agreement ("Development Agreement") incident to the future development of approximately three hundred and twenty-six (326) acres of real property, as further described in Exhibit "A" attached to the Development Agreement (the "Property"), which Development Agreement was recorded in the Office of the Register of Mesne Conveyances of Charleston County, South Carolina (the "RMC") in Volume 0530 at Page 704; and

WHEREAS, the Development Agreement provides that amendments can be made in whole or in part; and

WHEREAS, the Property includes the Magnolia Property, portions of which are owned by Ashley I, Ashley II, and the ARI Affiliates, as more particularly described in Exhibit "A-1" of the Development Agreement; and

WHEREAS, the City, Ashley River, Ashley I, Ashley II and the ARI Affiliates desire to amend the Development Agreement as it relates solely to the Magnolia Property to include Ashley I, Ashley II, and the ARI Affiliates as parties to the Development Agreement and to clarify certain other matters included in the Development Agreement; and

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth in this First Amendment, the receipt and sufficiency of such consideration being acknowledged by the parties and pursuant to the South Carolina Local Government Development Agreement Act, codified as S.C. Code Section 6-31-10 through 6-31-160, as amended, the parties to this First Amendment, intending to be legally bound, agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference.

2. Definitions. Paragraph 2(v) of the Development Agreement is deleted in its entirety and replaced by the following:

(v) "Property Owner" means Ashley River Investors, LLC, a South Carolina limited liability company; Ashley I, LLC, a South Carolina limited liability company; Ashley II of Charleston, LLC, a South Carolina limited liability company; Ashley River Investors I (Core Sound), LLC, a South Carolina limited liability company; Ashley River Investors III (Ashepoo), LLC, a South Carolina limited liability company; Ashley River Investors VI (Heriot St.), LLC, a South Carolina limited liability company; Ashley River Investors VII (Koppers), LLC, a South Carolina limited liability company; Ashley River Investors IX (CPW), LLC, a South Carolina limited liability company; the City of Charleston; St. Matthews Lutheran Church; and the Bishop of Charleston, together with all subsidiaries thereof, its individual or corporate successors and any assignee, whereby such interest is assigned in writing pursuant to Section 27 of the Development Agreement, unless the context clearly implies a reference to a single Property Owner. Unless the context dictates otherwise, "Property Owner" hereinafter refers collectively to all of the Owners, their successors and/or assigns, including Developers.

3. General Terms and Conditions. Paragraph 28(i) is deleted in its entirety.
4. Improvements Agreement. Paragraph 13(e) of the Development Agreement is deleted in its entirety and replaced by the following:

(e) The City and Ashley River agree and acknowledge that the Improvements Agreement is essential and integral to the development of the Magnolia Property, and is included herein to satisfy, in part, the requirements of § 6-31-60(A)(4) of the Act. Pursuant to and subject to the provisions of the Improvements Agreement, the City agrees to reimburse Ashley River from the Tax Increment Finance Revenue for the construction costs of the Facilities that will serve the development, a list of which is attached to the Improvements Agreement, attached hereto as Exhibit H. The City and Ashley River agree to use best efforts to satisfy the conditional requirements set forth in said agreement. The term of the Improvements Agreement shall continue for the duration of this Agreement or until acceptance by the City of the final Facility to be constructed by Ashley River and receipt by Ashley River of reimbursement as contemplated by the Improvements Agreement.

5. Revised Exhibits. The City and the Property Owner acknowledge and agree to replace Exhibit C (Development Schedule) and Exhibit H (Public Infrastructure Improvements Agreement) to the Agreement, respectively, and replace in their stead new Exhibits C and H, a copy of the new Exhibits being attached to this First Amendment and incorporated herein by reference.
6. Notices. All notices to Ashley River, the Ashley River Affiliates, Ashley I and Ashley II under the Development Agreement shall be provided at the following addresses:

Ashely I  
R. William Metzger, Jr., Esquire  
Plan Administrator/Trustee for Ashley I, LLC

1301 Gadsden Street  
Columbia, SC 29201

G. William McCarthy, Jr., Esquire  
McCarthy, Reynolds & Penn, LLC  
1517 Laurel Street (29201)  
P. O. Box 11332  
Columbia, SC 29211-1332

Ashley II

R. William Metzger, Jr., Esquire  
Plan Administrator/Trustee  
for Ashley II of Charleston, LLC  
1301 Gadsden Street  
Columbia, SC 29201

With copy to:

G. William McCarthy, Jr., Esquire  
McCarthy, Reynolds & Penn, LLC  
1517 Laurel Street (29201)  
P. O. Box 11332  
Columbia, SC 29211-1332

ARI and the ARI Affiliates

Ashley River Investors, LLC  
201 Sigma Drive, Suite 400  
Summerville, SC 29486  
ATTN: Mark Lewis

With copy to:

George Bullwinkel, Esq.  
Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, SC 29401

7. Effect. Terms and provisions of the Development Agreement that are not expressly modified by this First Amendment shall remain in full force and effect. All of the provisions of the Development Agreement unambiguously affected by this First Amendment shall be deemed amended, whether or not actually specified herein, if such amendment is clearly necessary to effectuate the intent of the parties hereto. The Development Agreement, as modified hereby, is hereby ratified and approved in all respects.

8. Final Agreement. The Development Agreement, as amended by the First Amendment, represents the final agreement between the parties regarding the subject matter hereof and may not be contradicted by evidence of prior, subsequent or contemporaneous oral agreements of the parties. No amendment or modification hereto shall be valid and binding unless expressed in writing and executed by both parties hereto.
9. Counterparts. This First Amendment may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this First Amendment.
10. Severability. If any provision of this First Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this First Amendment and the Development Agreement shall nonetheless remain in full force and effect.
11. Applicable Law. This First Amendment is enforceable in the State of South Carolina and shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of the State of South Carolina.
12. Captions. The section headings appearing in this First Amendment are for convenience of reference only and are not intended, to any extent for the purpose, to limit or define the test of any section or any subsection hereof.
13. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this First Amendment and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this First Amendment or any exhibits or amendments hereto.

[SEPARATE SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

**CITY OF CHARLESTON**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
John Tecklenburg, Mayor

\_\_\_\_\_  
Witness

Attest: \_\_\_\_\_  
Clerk of Council

STATE OF SOUTH CAROLINA     )

)

**ACKNOWLEDGMENT**

COUNTY OF CHARLESTON     )

I, \_\_\_\_\_, Notary of the Public of the State of South Carolina, do hereby certify that Charleston, South Carolina, by \_\_\_\_\_, its Mayor, and \_\_\_\_\_, its Clerk of Council, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2015, and acknowledged the execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

By: MWV-MAGNOLIA/ARC I, LLC,  
a Delaware limited liability company  
Its: Director

Witness

By: Mark E. Lewis  
President and Chief Executive Officer

By: PLBC GP, LLC  
a Georgia limited liability company  
Its: Director

By: PLBC MANAGER, LLC  
a Georgia limited liability company  
Its: Co-Manager

Witness

By: Harry E. Morgan  
Manager

By: MAGNOLIA ATLANTIC PARTNERS,  
LLC  
a Georgia limited liability company  
Its: Co-Manager

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By: \_\_\_\_\_  
Richard H. Lee  
Manager

[illegible]

## ACKNOWLEDGMENT

I, \_\_\_\_\_, the undersigned Notary of the Public of the State of South Carolina, do hereby certify that Mark E. Lewis, President and Chief Executive Officer of MWV-MAGNOLIA/ARC, LLC, the Director of Ashley River Investors, LLC, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2017, and acknowledged the execution of the foregoing instrument.

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

## ACKNOWLEDGMENT

My Commission Expires: \_\_\_\_\_

## ACKNOWLEDGMENT

My Commission Expires: \_\_\_\_\_

a South Carolina limited liability company

By:

Witness

## ACKNOWLEDGMENT

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_



a South Carolina limited liability company

Witness

By:

R. William Metzger, Jr., Plan  
Administrator/Trustee for the Ashley  
Liquidating Trust

Witness

STATE OF SOUTH CAROLINA )

)

## ACKNOWLEDGMENT

COUNTY OF BERKELEY )

)

I, \_\_\_\_\_, the undersigned Notary of the Public of the State of South Carolina, do hereby certify that R. William Metzger, Jr., as Plan Administrator/Trustee for the Ashley Liquidating Trust, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_ 2017, and acknowledged the execution of the foregoing instrument.

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

**ASHLEY RIVER INVESTORS I (CORE SOUND), LLC**  
a South Carolina limited liability company

By: MWV-MAGNOLIA/ARC I, LLC,  
a Delaware limited liability company  
Its: Director

## Witness

By: \_\_\_\_\_  
Mark E. Lewis  
President and Chief Executive Officer

Witness

By: PLBC GP, LLC  
a Georgia limited liability company  
Its: Director

By: PLBC MANAGER, LLC  
a Georgia limited liability company  
Its: Co-Manager

Witness

By: \_\_\_\_\_  
Harry E. Morgan  
Manager

Witness

By: MAGNOLIA ATLANTIC PARTNERS, LLC  
a Georgia limited liability company  
Its: Co-Manager

Witness

By: Richard H. Lee  
Manager

Witness

[illegible]

## ACKNOWLEDGMENT

I, \_\_\_\_\_, the undersigned Notary of the Public of the State of South Carolina, do hereby certify that Mark E. Lewis, President and Chief Executive Officer of MWV-MAGNOLIA/ARC, LLC, the Director of Ashley River Investors I (Core Sound), LLC, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2017, and acknowledged the execution of the foregoing instrument.

Notary Public for South Carolina

My Commission Expires:

## ACKNOWLEDGMENT

My Commission Expires: \_\_\_\_\_

## ACKNOWLEDGMENT

My Commission Expires: \_\_\_\_\_

By: MWV-MAGNOLIA/ARC I, LLC,  
a Delaware limited liability company  
Its: Director

By: \_\_\_\_\_  
Mark E. Lewis  
President and Chief Executive Officer

By: PLBC MANAGER, LLC  
a Georgia limited liability company  
Its: Co-Manager

By: Harry E. Morgan  
Manager

By: Richard H. Lee  
Manager

## ACKNOWLEDGMENT

My Commission Expires:

## ACKNOWLEDGMENT

My Commission Expires: \_\_\_\_\_

## ACKNOWLEDGMENT

My Commission Expires: \_\_\_\_\_

By: MWV-MAGNOLIA/ARC I, LLC,  
a Delaware limited liability company  
Its: Director

By: Mark E. Lewis  
President and Chief Executive Officer

By: PLBC MANAGER, LLC  
a Georgia limited liability company  
Its: Co-Manager

By: Harry E. Morgan  
Manager

By: \_\_\_\_\_  
Richard H. Lee  
Manager

## ACKNOWLEDGMENT

NPCHAR1:2132544.6

COUNTY OF BERKELEY )  
 )  
 ) ACKNOWLEDGMENT

I, \_\_\_\_\_, the undersigned Notary of the Public of the State of South Carolina, do hereby certify that Harry E. Morgan, Manager of PLBC MANAGER, LLC a Co-Manager of PLBC GP, LLC, a Director of Ashley River Investors VI (Heriot St.), LLC, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2017, and acknowledged the execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public for South Carolina

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
 ) ACKNOWLEDGMENT  
COUNTY OF BERKELEY )

I, \_\_\_\_\_, the undersigned Notary of the Public of the State of South Carolina, do hereby certify that Richard H. Lee, Manager of MAGNOLIA ATLANTIC PARTNERS, LLC, a Co-Manager of PLBC GP, LLC, a Director of Ashley River Investors VI (Heriot St.), LLC, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2017, and acknowledged the execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public for South Carolina

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

By: MWV-MAGNOLIA/ARC I, LLC,  
a Delaware limited liability company  
Its: Director

Witness

By: PLBC GP, LLC  
a Georgia limited liability company  
Its: Director

**Witness**

Witness

Witness

Witness

[illegible]

I, \_\_\_\_\_, the undersigned Notary of the Public of the State of South Carolina, do hereby certify that Mark E. Lewis, President and Chief Executive Officer of MWV-MAGNOLIA/ARC, LLC, the Director of ASHLEY RIVER INVESTORS VII (Koppers), LLC, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2017, and acknowledged the execution of the foregoing instrument.

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_  
STATE OF SOUTH CAROLINA                    )



COUNTY OF BERKELEY )  
 )  
 ) ACKNOWLEDGMENT

I, \_\_\_\_\_, the undersigned Notary of the Public of the State of South Carolina, do hereby certify that Harry E. Morgan, Manager of PLBC MANAGER, LLC a Co-Manager of PLBC GP, LLC, a Director of ASHLEY RIVER INVESTORS VII (Koppers), LLC, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2017, and acknowledged the execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public for South Carolina

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
 ) ACKNOWLEDGMENT  
COUNTY OF BERKELEY )

I, \_\_\_\_\_, the undersigned Notary of the Public of the State of South Carolina, do hereby certify that Richard H. Lee, Manager of MAGNOLIA ATLANTIC PARTNERS, LLC, a Co-Manager of PLBC GP, LLC, a Director of Ashley River Investors VII (Koppers), LLC, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2017, and acknowledged the execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public for South Carolina

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

By: MWV-MAGNOLIA/ARC I, LLC,  
a Delaware limited liability company  
Its: Director

Witness

By: PLBC GP, LLC  
a Georgia limited liability company  
Its: Director

By: PLBC MANAGER, LLC  
a Georgia limited liability company  
Its: Co-Manager

Witness

By: MAGNOLIA ATLANTIC PARTNERS, LLC  
a Georgia limited liability company  
Its: Co-Manager

Witness

By: Richard H. Lee  
Manager

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )

I, \_\_\_\_\_, the undersigned Notary of the Public of the State of South Carolina, do hereby certify that Mark E. Lewis, President and Chief Executive Officer of MWV-MAGNOLIA/ARC, LLC, the Director of Ashley River Investors IX (CPW), LLC, personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, and acknowledged the execution of the foregoing instrument.

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

## ACKNOWLEDGMENT

My Commission Expires: \_\_\_\_\_

## ACKNOWLEDGMENT

My Commission Expires: \_\_\_\_\_

## Magnolia Property Development Schedule

		<b>Residential</b>	<b>Office</b>	<b>Retail</b>	<b>Hospitality</b>
<b>Year</b>	<b>Actual Year</b>	<b>(Units)</b>	<b>(Sq. Ft.)</b>	<b>(Sq. Ft.)</b>	<b>(Keys)</b>
1	2016	0	0	0	0
2	2017	0	0	0	0
3	2018	0	0	0	0
4	2019	0	100,000	75,000	0
5	2020	350	100,000	75,000	300
6	2021	500	100,000	100,000	0
7	2022	750	100,000	100,000	0
8 to 12	2023 to 2027	1900	450,000	70,000	390

AMENDED AND RESTATED PUBLIC INFRASTRUCTURE IMPROVEMENTS  
AGREEMENT

THIS PUBLIC INFRASTRUCTURE IMPROVEMENTS AGREEMENT (this "**Agreement**") is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2015 (the "**Effective Date**"), by and between the CITY OF CHARLESTON, SOUTH CAROLINA, a South Carolina municipal corporation (the "**City**"), and ASHLEY RIVER INVESTORS, LLC, a South Carolina limited liability company, its successors and assigns (collectively, the "**Developer**"). The City and the Developer are sometimes referred to individually as a "**Party**" and together as the "**Parties**" as the context may require.

RECITALS

1. This Agreement replaces and supersedes in full that certain Development and Public Infrastructure Improvements Purchase Agreement effective as of the 1st day of December, 2007 by and between the City and the Present Owner (as defined below), the Present Owner's rights under which terminated pursuant to Agreement dated April 20, 2011 between the City and the Present Owner.

2. Pursuant to the "Tax Increment Financing Law" codified at Title 31, Chapter 6, Code of Laws of South Carolina, 1976 as amended (the "**TIF Act**") the City is authorized to establish redevelopment project areas, issue obligations to carry out a redevelopment project and pay redevelopment project costs, each as defined in the TIF Act. The City Council of the City ("**City Council**") by ordinance (the "**TIF Ordinance**") adopted December 21, 2004 established the Charleston Neck Redevelopment Project Area (the "**TIF District**"). The Redevelopment Plan attached to the TIF Ordinance describes the expectation that certain public improvements will be funded by TIF Revenues (as defined in the MOU defined below) or will be financed by borrowings secured by a pledge of revenues generated by the TIF District and the Assessments (as hereinafter defined) generated in the Improvement District (as hereinafter defined).

3. Ashley I, LLC and Ashley II of Charleston, LLC (collectively the "**Present Owner**") owns, in fee simple approximately 90% of the 210.52 acres of property, which 210.52 acres of property is more particularly described in Exhibit A attached hereto and made a part hereof (the "**Property**"). The entirety of the Property is situated within the TIF District. The portion of the Property owned by Present Owner is herein referred to as the "Present Owner's Property". Pursuant to the Municipal Improvements Acts of 1999, Title 5, Chapter 37 of the Code of Laws of South Carolina, 1976 as amended (the "**Municipal Improvements Act**") the City has pursuant to an ordinance enacted by the City Council on July 17, 2007, (the "**MID Ordinance**") designated the Property as a Municipal Improvement District referred to as the "Magnolia Improvement District" (the "**Improvement District**").

4. The City Council amended the TIF Ordinance by an ordinance approved on July 8, 2014 to among other things extend the term of the TIF District.

5. Magnolia/ARC Lender, LLC ("**Lender**") holds a note secured by, inter alia, the Present Owner's Property. The note is in default and Lender may foreclose upon or otherwise acquire all or portions of the Present Owner's Property. It is the Developer's intention to acquire from Lender or the Present Owner from time to time all or portions of the Present Owner's Property.

6. After acquisition of all or portion of the Present Owner's Property, the Developer proposes to develop all or portions thereof in multiple phases (or convey portions of such Property to third parties for development consistent with and subject to this Agreement). In anticipation of such redevelopment, the City and Developer entered into a Memorandum of Understanding and

Agreement (“**MOU**”) a copy of which is attached as **Exhibit E** which was approved by Resolution of the City Council dated July 8, 2014 and amended by ordinance adopted August 18, 2015.

7. In conjunction with the development of all or portions of the Property, subject to the terms and conditions hereof, the Developer will undertake certain improvements, which improvements are set forth on **Exhibit B** attached hereto and made a part hereof (collectively the “**Public Infrastructure Projects**” and individually as the context may require a “**Public Infrastructure Project**”). The TIF Ordinance and the MID Ordinance describe revenue bonds to be issued to defray the cost of a portion of such Public Infrastructure Project (“**TIF Bonds**” and “**MID Bonds**,” respectively). The TIF Ordinance and the MID Ordinance, as currently amended and to be amended in the future, describe certain public infrastructure improvements to be undertaken within the Improvement District and therefore within the TIF District.

8. The parties intend that certain of the costs to be incurred by Developer (or Developer Affiliate) in connection with the remediation, engineering, design, permitting, construction (including construction management fees as set forth in **Exhibit B**) and equipping of the Public Infrastructure Projects (collectively the “**Public Infrastructure Costs**”), which shall include all types of costs eligible for reimbursement under applicable law, will be funded from the proceeds available from TIF Bonds (“**TIF Bonds Proceeds**” as hereinafter defined) and Excess TIF Revenues (as defined in the MOU). In addition, funds advanced by Developer for Public Infrastructure Costs will be reimbursed from the TIF Bonds and Excess TIF Revenues. The estimated Public Infrastructure Costs are set forth on **Exhibit B** attached hereto.

9. The City is willing to facilitate the reimbursement described above to the Developer and/or Developer Affiliate from the TIF Bond Proceeds and Excess TIF Revenues for such Public Infrastructure Costs and to disburse TIF Bond Proceeds and Excess TIF Revenues on the terms and conditions hereinafter set forth.

10. In order for Developer to successfully develop the Property and in order for the City to successfully issue the TIF Bonds, in accordance with the Improvement Plan (as defined herein) and the MOU, it is necessary that the TIF Ordinance, the MID Ordinance and related ordinances heretofore passed by the City Council be amended in accordance with the requirements hereinafter set forth; and Developer’s and the City’s obligations set forth in this Agreement are conditioned upon such TIF Bonds being issued and such modifications being accomplished by properly adopted City Council ordinances.

11. In connection with the City’s issuance of TIF Bonds, it is necessary that the City Council by ordinance (the “**Bond Ordinance**”) approve such TIF Bonds and it is further necessary that a successful financing of the TIF Bonds be accomplished.

12. One or more of the TIF Bonds series may be secured, at Developer’s election, by the Assessments.

13. The parties intend to enter into one or more supplemental amendments or addendums to this Agreement in connection with the issuance of TIF Bonds.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I - RECITALS

Section 1.1 The foregoing Recitals are incorporated into and made a part of this Agreement.

## ARTICLE II - DEFINITIONS

**Section 2.1 Defined Terms.** In addition to the terms defined in the Recitals and elsewhere herein, the following terms shall have the meanings specified herein:

"Applicable Requirements" shall mean, collectively, all requirements contained in this Agreement, the Indenture, the Construction Documents, all City standards and requirements for publicly dedicated infrastructure improvements, and all applicable and duly enacted federal, state, county and City laws, codes, ordinances, rules, regulations, approvals, and permits (all as may have been modified by any documents applicable to the Property, including without limitation any subsequent Development Agreement executed pursuant to §6-31-160 of the Code of Laws of South Carolina, as amended). The Applicable Requirements shall not include the City procurement code.

"Approved Reviewing Consultant" means an engineer, geotechnical specialist, or other type of consultant ("Reviewing Consultant") whose services are determined by one of the parties to be useful in connection with technical reviews associated with City action on Development Permits, whose qualifications meet the City's requirements for such services and who has been approved by the City. The Developer shall have the option, from time to time, to submit a list of qualified Reviewing Consultants to be pre-approved by City. The Approved Reviewing Consultant, when retained, will perform functions otherwise required to be performed by the City, including reviewing designs and plans, inspecting construction and determining satisfaction of project requirements; however, all final approvals shall be made by the City. The City shall approve those Reviewing Consultants who meet the City's qualification requirements. The costs of the Approved Reviewing Consultant shall be included within Public Infrastructure Cost.

"Assessments" means those assessments to be levied against tracts and lots within the Improvement District for the purposes provided for in the Municipal Improvements Act of 1999, Title 5, Chapter 37 of the Code of Laws of South Carolina, as amended, specifically Section 5-37-30 as established by the MID Ordinance, as modified pursuant to §3.1 herein.

"City Project Manager" shall mean the individual appointed by the City who is responsible for coordinating the City's obligations and rights under this Agreement and who is responsible for coordinating all City responses to Developer's applications for Development Permits, for assisting Developer with the application and review process for Development Permits and for obtaining timely and unified City responses to Developer's requests for approvals, permits and consents. The City Project Manager shall be a City employee and Developer shall be entitled to rely on the authority of the City Project Manager to act on behalf of the City in obtaining such approvals, permits and consents unless the City Ordinances explicitly provide otherwise. The costs of the City Project Manager shall be included as a Public Infrastructure Cost and shall not exceed \$150,000 annually and shall not exceed 1% in the aggregate of the total approved budget established pursuant to Section 5.7. All of the City Project Manager's time shall be dedicated to the redevelopment of the Improvement District, unless the parties to this Agreement agree otherwise, in which case the costs shall be prorated based upon an allocation formula agreed to between the parties.

"Construction Documents" shall mean, collectively, the Plans, and all construction budgets, engineering reports, Design Professional contracts, construction management agreements, contracts for environmental services and remediation, supply contracts, construction contracts, project schedules, and other documentation pertaining to the design, equipping, and construction of the Public Infrastructure Projects (but not including any construction financing documents with third party construction loan lenders, if any), each as may be amended from time to time in accordance herewith.

"Construction Fund" shall mean a fund established into which TIF Bond Proceeds and Excess TIF Revenues are deposited in order to reimburse Developer for and/or pay directly Public Infrastructure Costs.

"Design Professional" means the properly licensed architects and/or engineers engaged by the Developer for a Public Infrastructure Project as further described in Section 5.13 of this Agreement.

"Developer Affiliate" shall mean any entity owned in whole or part by Developer or by any entity that controls, is controlled by, or is under common control with Developer.

"Development Permits" includes a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, certificate of occupancy, municipal separate storm sewer system (MS4) permit and/or any other official action of the City having the effect of permitting all or portions of the Project or use of all or portions of the property.

"Disbursement Request" has the meaning set forth in Section 6.2 of this Agreement.

"Indenture" shall mean the master trust indenture, if any, as may be modified or supplemented by one or more supplemental indentures.

"Improvement Plan" shall mean that certain Improvement Plan (as amended from time to time) for the Improvement District, a copy of which is attached as Exhibit C and made a part of this Agreement.

"Plans" shall mean the final plans and specifications, including all drawings and design calculations, prepared by a Design Professional and approved by the City in accordance with the procedures set forth in Section 8.2 with respect to a Public Infrastructure Project or portion thereof.

"Project Schedule" has the meaning set forth in Section 5.5 of this Agreement.

"Reimbursement Resolution" shall mean the City of Charleston Resolution Number 2014-08 dated July 15, 2014, as amended.

### **ARTICLE III - CONDITIONS TO THE DEVELOPER'S OBLIGATIONS HEREUNDER**



**Section 3.1 Modification of TIF Ordinance, MID Ordinance and Related Ordinances and Documents.** The respective obligations of the Developer and City hereunder are conditioned upon, among other conditions set forth in this Agreement, the following:

- (i) Adoption by City Council of an ordinance modifying the Improvement Plan as agreed upon between the City and Developer;
- (ii) Adoption by the City Council of an ordinance eliminating the MID Bonds and clarifying that the purpose of the Assessments is to act only as security for the TIF Bonds at Developer's election and for no other purpose;
- (iii) Agreement of Developer and City that, with respect to future issuance of TIF Bonds, at such time as TIF Revenues exceed 102% of the current bond year's principal and interest payment such excess shall transfer to the Construction Fund for reimbursement of the Developer of Project Infrastructure Costs (such agreement being subject to the obligations imposed by purchaser of such TIF Bonds);
- (iv) The City's commitment to issue subsequent series of TIF Bonds in order to finance Public Infrastructure Costs, recognizing that the principal amount of such future issuance of TIF Bonds is dependent upon such factors as the income stream securing such borrowings as well as interest rates then prevailing;
- (v) The Developer recommends to the City the assessment method for calculating the Assessments among the various tracts and lots within the Improvement District and an ordinance is adopted by the City amending those provision of the MID Ordinance to include this assessment methodology;
- (vi) Developer's acquisition of title to (or a valid easement or other right to construct upon) the portion or portions of the Property on which a Public Infrastructure Project is to be located.
- (vii) Adoption of an amendment to the Reimbursement Resolution clarifying that Developer may be reimbursed from Excess TIF Revenues and that the amount of approved Public Infrastructure Costs is the amount set forth on the attached **Exhibit B** and the maximum amount of TIF Bonds to be issued is \$149 million.

## **ARTICLE IV**

**Section 4.1** In connection with the issuance of TIF Bonds, Developer and the City shall have the right, upon mutual agreement, to designate additional Public Infrastructure Projects (the existing Public Infrastructure Projects listed on **Exhibit B**) in accordance with the Improvement Plan and shall enter into an amendment or addendum hereto or a separate agreement in form and substance equivalent hereto; provided however that TIF Bond Proceeds and Excess TIF Revenues shall first be applied to Public Infrastructure Projects listed on **Exhibit B**. Provided that Developer is not in default hereunder or with respect to any Assessments, the City shall proceed with the issuance of such subsequent series of TIF Bonds contemplated under the MOU for the continued

development of the Property in accordance with the Improvement Plan. The TIF Bond Proceeds and Excess TIF Revenues (and revenues from the Assessments imposed upon the Property) shall not be used by the City for any purposes other than as provided hereunder.

**Section 4.2** The City agrees to deposit all TIF Bond Proceeds and Excess TIF Revenues generated by the TIF District into the Construction Fund established for Public Infrastructure Costs, including the reimbursement of Developer for Public Infrastructure Costs and to apply such TIF Bond Proceeds and Excess TIF Revenues for such purposes. Excess TIF Revenues shall be made available hereunder for payment or reimbursement of Public Infrastructure Costs paid or incurred by Developer or any other Developer Affiliate to the extent that such amounts have not been reimbursed. As a final distribution prior to dissolution of the special tax allocation fund as described at Section 31-6-70 of the TIF Act, any funds remaining in such Construction Fund shall be applied to reimburse Developer or any other Developer Affiliate as described in the preceding sentence to the extent such reimbursement shall not previously have been made. The reimbursements contemplated in this Agreement will include the amount of Assessments (including imputed interest thereon at the interest rate of the most recently issued TIF Bonds) paid by Developer with respect to the TIF Bonds. Beginning with the first year that any Assessments are payable with respect to the TIF Bonds and continuing each year thereafter, Developer shall be required to deliver to the City a written report indicating which amounts of the Assessments for the applicable year are being paid by Developer or any other Developer Affiliate and are therefore potentially reimbursable under this Agreement. Such annual report shall also indicate any imputed interest to date that is applicable to previously paid Assessments as provided above.

**Section 4.3** City agrees that any proceeds of Assessments imposed within the Improvement District, or proceeds of loans to the City or bonds issued by the City to be paid or secured in part from assessments imposed thereon (including without limitation the TIF Bonds), shall not be used by the City for any purposes other than as provided under this Agreement or as otherwise agreed by the parties.

## **ARTICLE V- CONSTRUCTION REQUIREMENTS**

### **Section 5.1 Responsibilities with Respect to Construction.**

(a) Developer (or Developer Affiliate) shall cause all work performed by it with respect to the construction of Public Infrastructure Projects to be conducted in a good workmanlike and commercially reasonable manner. The Developer shall retain at all times adequate staff or consultants to administer and coordinate all work related to the design, engineering, acquisition, construction, and installation of the Public Infrastructure Projects. Pursuant to Sections 5.5 and 5.7 of this Agreement, the Developer and City shall meet prior to commencement of construction of each phase of the Public Infrastructure Projects and develop a schedule and budget for each such phase. The City shall make available TIF Excess Revenues and the TIF Bond Proceeds for reimbursement of Public Infrastructure Costs as set forth herein.

(b) Developer shall be paid a construction management fee as set forth in **Exhibit B**.

(c) Public Infrastructure Projects identified on **Exhibit B** will be undertaken by Developer, and the Public Infrastructure Costs incurred in connection as set forth in **Exhibit B**

therewith shall be reimbursed and/or directly paid from the TIF Bond Proceeds and Excess TIF Revenues in accordance with the terms of this Agreement.

(d) Upon written agreement of the City and Developer, **Exhibit B** may be amended from time to time to change individual Public Infrastructure Projects provided that such change does not compromise the economic viability of the Property and TIF Bonds as a whole. In addition, additional Public Infrastructure Projects may be added to **Exhibit B** from time to time at the request of the City or Developer upon written agreement of the City and Developer. After reimbursement of the Developer for the Public Infrastructure Costs incurred pursuant to and in the priority described in ARTICLE II of the MOU, the next \$500,000 in TIF Bond Proceeds or Excess TIF Revenue shall be applied to construction of a community center in the neighborhood of Rosemont, although the actual construction of the community center shall not be the responsibility of Developer.

**Section 5.2 Compliance with Applicable Requirements.** Developer shall construct the Public Infrastructure Projects that are undertaken in accordance with Applicable Requirements. The Developer shall obtain all necessary permits and approvals prior to commencing construction of any portion of an individual Public Infrastructure Project, and promptly thereafter shall commence and diligently pursue the completion of the approved portion of the Public Infrastructure Project in accordance with all Applicable Requirements and the timetable established pursuant to 5.5.

**Section 5.3 Approval of Plans.** The Developer shall cause all Plans to be prepared for the Public Infrastructure Projects by a Design Professional, duly licensed and in good standing in the State of South Carolina, and submitted for the City's prior written approval in accordance with the City's requirements and procedures as set forth in Section 8.2. The City shall not be obligated to make any disbursements hereunder with respect to a Public Infrastructure Project or portion thereof until the City has approved the Plans for the applicable Public Infrastructure Project or portion thereof, provided that design costs shall be reimbursed prior to approval of the Plans and prior to approval of the Schedule of Values (as defined in Section 5.7 below) for the applicable Public Infrastructure Project. The City's approval of the Plans shall not be deemed to waive the obligation of the Developer and/or the Design Professional to provide amendments to the Plans so that the Plans comply with Applicable Requirements if it is reasonably determined by the City that any such Plans do not comply. The Developer shall promptly provide to the City copies of each set of the Plans as required by the City's building codes and requirements and one reproducible copy of each set of the approved Plans, which shall become the property of the City, at no cost to the City. The Developer may not materially modify or amend the Plans approved by the City without the prior written consent and approval of the City as provided herein. For purposes of this Section 5.3, a material modification or amendment of the Plans for a Public Infrastructure Project shall be any change or changes which (a) involves a cost increase the greater of more than \$250,000 or 15 percent in aggregate of the cost of the particular Public Infrastructure Project, (b) impairs the structural integrity or configuration of the Public Infrastructure Project, or (c) results in a violation of any Applicable Requirement. Approvals of material modifications or amendments to the Plans that are requested by Developer shall be subject to the reasonable discretion of the City. Notwithstanding any provision to the contrary, Developer shall consult with the City Project Manager before amending or modifying the Plans for a Public Infrastructure Project.

**Section 5.4 Completion.** Subject to Section 8.5 and sufficient TIF Bond Proceeds and Excess TIF Revenue being available to reimburse Developer for Public Infrastructure Costs, the Developer shall complete individual Public Infrastructure Projects undertaken by the Developer for dedication by the Developer and acceptance by the City within the applicable period of time as set forth in the Project Schedule developed pursuant to Section 5.5. Changes to the commencement and completion dates set forth in the Project Schedule may only be made pursuant to the terms of

this Agreement. The Developer reasonably expects that the TIF Bond Proceeds will be fully disbursed and expended in accordance with the Project Schedule.

**Section 5.5 Project Schedule.** The Developer shall prepare and submit to the City project schedules for the individual Public Infrastructure Projects (each a "**Project Schedule**") for the City's approval prior to commencement of a Public Infrastructure Project. Failure to meet a date set forth in a Project Schedule shall not, in and of itself, constitute a material breach of this Agreement by Developer, but shall be subject to the Developer's opportunity to cure as provided herein and shall be based upon the totality of circumstances, including but not limited to materiality of the date and *force majeure* events. The obligation to meet a Project Schedule date shall at all times be subject to the availability of Excess TIF Revenues or TIF Bond Proceeds to reimburse Developer for the costs of the Public Infrastructure Project. If the Developer requests a modification in the dates as set forth in a Project Schedule and is able to demonstrate and establish that there is good cause to modify those dates, including, without limitation, changes in market conditions, delivery dates of materials, or production requirements, and any such change will not adversely affect the tax exempt status of the TIF Bonds, those dates shall be modified to the extent necessary in accordance with the terms of this Agreement. Individual Project Schedules shall be modified as applicable to reflect any changes in the applicable Plans. The modification of individual Project Schedules shall be submitted and reviewed in accordance with the approval procedure set forth in Section 8.2.

**Section 5.6 Independent Contractor.** In performing this Agreement, the Developer is an independent contractor and not the employee of the City. Except as set forth in this Agreement, the City shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee, or supplier of the Developer but shall be responsible to fund amounts to the Developer (or Developer Affiliate as applicable) in accordance with this Agreement, unless otherwise directed in writing by the Developer to fund directly to Developer's contractors, suppliers and consultants.

**Section 5.7 Project Budget; Schedule of Values.** The initial cost budget estimate to complete the Public Infrastructure Projects is set forth on **Exhibit B** attached hereto, together with the project breakdown for each applicable phase. The budget estimates for a Public Infrastructure Project set forth on **Exhibit B** hereto may be amended from time to time to reflect increases, decreases, or reallocations as approved in writing by the City Project Manager such approval not to be unreasonably withheld. Prior to commencement of work on any Public Infrastructure Project, the Developer shall prepare and submit to the City for the City's review and approval a detailed cost breakdown allocating values to various portions of the applicable Public Infrastructure Project by each trade and division of the work ("**Schedule of Values**"). The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the City may reasonably require. The Schedule of Values with trade payment breakdown shall provide sufficient detail to identify sections of the Public Infrastructure Project by convenient or meaningful units and shall be updated as reasonably required by the City. Any Schedule of Values or trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the work shall be rejected. The Schedule of Values for one or more Public Infrastructure Projects shall be modified from time to time as necessary to reflect any changes to the applicable Plans or any differences in estimated and actual costs. The approval of a Schedule of Values or any modification thereto shall be submitted and reviewed in accordance with the approval procedure set forth in Section 8.2.

**Section 5.8 Mortgages and Other Liens to be Subject to this Agreement.** In connection with the acquisition, financing of, development and construction on the Property (other than Public Infrastructure Projects funded under this Agreement), the Developer may from time to time grant mortgages or other liens to its lenders. Any mortgage or other liens which may

encumber the Property shall be subject to the condition that all Public Infrastructure Projects funded under this Agreement, together with all easements necessary for the operation and maintenance thereof, shall upon acquisition by Lender or its assignee be conveyed to the City upon completion thereof and acceptance thereof by the City as provided herein and in the Applicable Requirements without further consideration from the City, free and clear of any such mortgage or other lien or encumbrance, and any such lien holder shall upon request execute and record an acknowledgement that such Public Infrastructure Project, and all easements associated therewith, are released from such lien. In order to provide record notice of this provision, the City may require that this Agreement or a short form notice thereof be recorded in the county office of Register of Mesne Conveyance. Any existing mortgagee or other lien holder as of the date of such recording must execute a subordination of its lien to this Agreement. The City agrees that if requested by Developer it shall issue estoppels confirming that no default exists under this Agreement or associated TIF documents.

**Section 5.9 Subordination to Lien for Assessments.** As provided at Section 5-37-130 of the Municipal Improvements Act, the lien for Assessments against the Property and any lots or tracts subdivided therein shall be superior to any lien other than property tax liens, and accordingly shall be superior to any mortgage, lien or other encumbrance granted by the Developer to any lender or any other party.

**Section 5.10 Payment and Performance Bonds.** Contractors for Public Infrastructure Projects shall be required to obtain payment and performance bonds, unless Developer shall determine otherwise with the consent of the City Project Manager. However, the City shall not require payment and performance bonds for contracts for less than \$250,000. Such bonds are to be secured by cash, or a letter of credit or must be issued by a surety company licensed in the State of South Carolina with an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability" or other equivalent protection as approved by City Project Manager. Such bonds will name the City and Developer as the obligees and will be on a modified AIA Bond Form A312 (1984 ed.), an example of which is attached hereto as **Exhibit F**.

**Section 5.11 Developer's Agent.** Developer may from time to time appoint an agent to act on its behalf hereunder ("**Developer's Agent**"). The initial Developer's Agent shall be provided to the City by Developer pursuant to the notice provisions in Section 10.3 of this Agreement. The Developer may replace the Developer's Agent at any time and shall provide written notice of such replacement to the City.

**Section 5.12 Warranty.** The City and Developer shall obtain warranties from the Contractor constructing the Public Infrastructure Project that (a) materials and equipment furnished will be of good quality and new (unused) unless otherwise permitted by this Agreement or unless the City approves of reasonable substitutes presented by the Developer (such approval not to be unreasonably withheld); and (b) that the work will be of good quality, free from faults and defects and in conformance in all material respects with this Agreement, any amendments hereto, and the Plans. Contractors constructing Public Infrastructure Projects shall agree that any defects found within the said work will be repaired at contractor's expense for the period of at least one year (two years for road improvements) from substantial completion of the Public Infrastructure project or portion thereof as agreed to by the City Project Manager. Defects shall be defined as any work or services performed that do not comply with the Plans. With respect to roads, for purposes of commencement of such two year period applicable to road improvements, final approval shall mean approval by the City Project Manager of all work other than the final wearing surface of the road if such surface application is postponed with the consent of the City to avoid damage from ongoing construction activities.

**Section 5.13 Contractors.** Contractors to perform work on a Public Infrastructure Project shall be selected by Developer, subject to consultation with the City provided however, except as set forth herein or unless City agrees otherwise, Developer shall obtain at least three competing bids. Notwithstanding the preceding sentence, contractors and consultants performing environmental remediation work and Design Professionals (because of their unique expertise) shall be selected by Developer. The Parties affirm the City's Minority/Women Disadvantaged Business goals of 20% and their intention to work to achieve such goals.

**Section 5.14 Indenture Provisions.** Upon issuance of the TIF Bonds, certain procedures for the City's requisitioning of TIF Bond Proceeds may be set forth in an Indenture. The Developer shall provide all items and other information as may be reasonably required by the City to comply with such requisitioning procedures. Notwithstanding anything to the contrary contained herein, however, the City shall not be obligated to pay for a Public Infrastructure Project except as set forth herein. The City agrees to make available the Excess TIF Revenues and the TIF Bond Proceeds in the amounts as set forth herein. The City and Developer makes no warranty, express or implied, that the available TIF Bond Proceeds and Excess TIF Revenues will be sufficient to pay the Public Infrastructure Costs provided, however, that Developer shall have no obligation to construct individual Public Infrastructure Projects if TIF Bond Proceeds and Excess TIF Revenues do not exist to reimburse Developer for such individual Public Infrastructure Costs.

**Section 5.15 Notice of Project Commencement.** Developer shall require its general contractors to file a Notice of Project Commencement in accordance with the provisions of South Carolina Code Ann. §29-5-23 prior to the commencement of any Public Infrastructure Project.

**Section 5.16 Right of Way Abandonments.** The Parties contemplate that parts or all of Oceanic Street, Braswell Street, and Milford Street may be abandoned and/or relocated. To the extent permitted by applicable laws, the City shall abandon and/or convey to Developer any rights of way or portions thereof that do not constitute part of the new streets or other public areas to be constructed by Developer, and the City shall cooperate with and support Developer in connection with the timing of any abandonments and obtaining approvals of any other governmental authorities that may be required. The City and the Developer shall work together to provide temporary access to property owners affected by Public Infrastructure Projects, including the City making available other existing public roads. With respect to the Parker Marine Property (Tax Parcel 466-00-00-043) specifically, the City shall be responsible for all negotiations with Parker Marine Property owners and operators regarding access to and from such property (and resolution of all access issues); provided however that Developer shall provide land for and construct a temporary road connecting the Parker Marine Property to Braswell Street for the time period during which Milford Street is closed due to Public Infrastructure Projects by Developer.

**Section 5.17 [Reserved]**

**Section 5.18 Replacement Facilities.** Developer and City agree that, pursuant to the MOU, Developer (or a Developer Affiliate) shall manage the construction of facilities to replace the City's public services facilities currently located at Milford Street with facilities to be located at the agreed upon WR Grace replacement site ("**Replacement Facilities**"). The cost to construct the Replacement Facilities shall be paid with the proceeds of the TIF Bonds in the priority set forth in the MOU and subject to the following:

- (i) Any costs in excess of \$18,000,000 (as adjusted pursuant to ARTICLE IV, paragraph 4 of the MOU) shall be the sole responsibility of the City;
- (ii) The costs of the Replacement Facilities which are not to be paid from TIF

Bonds Proceeds shall be the sole responsibility of the City; and

- (iii) It is agreed that the deadline for commencement of construction of the Replacement Facilities, subject to available TIF Bond Proceeds and Excess TIF Revenue in the priority set forth in the MOU, will be December 31, 2018 provided, however, the current estimate of when TIF Bond Proceeds will be available for construction of the Replacement Facilities is calendar year 2024.
- (iv) In addition, ARI may terminate the current lease dated December 19, 2008 between the City of Charleston and Ashley II of Charleston, LLC by providing written notice no later than thirty-six (36) months prior to the effective date of the termination; provided, however, if a final Certificate of Occupancy for the Public Works Facility has not been issued by the termination date, the lease shall not terminate until sixty (60) days after a final Certificate of Occupancy for the Public Works facility has been issued.

If the TIF Bonds issued for the Replacement Facilities or any TIF Bonds issued thereafter are to be issued on a parity basis with any outstanding TIF Bonds (such TIF Bonds for the Replacement Facilities and subsequent TIF Bonds being referred to collectively herein as "Subsequent Parity TIF Bonds"), then such Subsequent Parity TIF Bonds shall not be issued until such time as the projected annual TIF Revenue in the next tax year exceeds by a factor of 1.2 the maximum sum of the annual debt service on all outstanding TIF Bonds and the projected annual debt service on any Subsequent Parity TIF Bonds being issued.

The site plan and design specifications for the construction of the Replacement Facilities shall be developed by the parties with each party retaining an original set ("**Replacement Specifications**"). Developer or Developer Affiliate shall manage the construction of the Replacement Facilities, including the selection and supervision of all contractors.

Solely with respect to the Replacement Facilities, Developer (or if applicable Developer Affiliate) shall be paid a construction management fee of 5% applicable to the total hard and soft costs associated with the Replacement Facilities. In addition, Developer (or Developer Affiliate) shall be reimbursed for all of its out of pocket expenses incurred with respect to the planning, development and construction of the Replacement Facilities including legal fees associated with negotiation of contracts, performance of work and resolution of claims related to the Replacement Facilities. The Developer and the City shall work together with respect to development of the Replacement Specifications for the Replacement Facility, provided however that such final Replacement Specifications shall be provided by City to Developer and provided however that the total cost of the Replacement Facility as modified pursuant to such final Replacement Specifications shall not exceed the amount established in Section 5.18(i) of this Agreement. Developer's (and Developer Affiliate's) scope of work shall not include any investigation and/or remediation of environmental impacts at the property upon which the Replacement Facilities are to be constructed and City shall obtain a conditional certificate of completion (with the remaining condition being placement of building pad, pavement, or other cover acceptable to DHEC) pursuant to the South Carolina Voluntary Cleanup Program prior to Developer (or Developer Affiliate) commencing construction of the Replacement Facilities. The costs associated with soil taken offsite by Developer pursuant to construction of the Replacement Facilities shall be at the

City's expense and shall be among "the cost to construct the Replacement Facilities" contemplated by this Section 5.18 and Article IV, paragraph 4 of the MOU. The City and/or the Contractor shall execute any required manifests for soil disposal. Notwithstanding anything else contained in this Agreement, the City and the Developer agree that they shall look solely to the design professionals and contractors (and not each other) designing and constructing the Replacement Facilities (and as appropriate any sub-contractors and/or suppliers) with respect to any claims, disputes or deficiencies associated with the design and construction of the Replacement Facilities.

## **ARTICLE VI - DISBURSEMENT REQUESTS**

**Section 6.1 Monthly Disbursements.** The Developer and Developer's contractor upon written directive by Developer shall be entitled to receive from the City disbursements of TIF Bond Proceeds or direct disbursements of Excess TIF Revenues for reimbursement and/or direct payment of the Public Infrastructure Costs incurred by them which are eligible for reimbursement on a monthly basis provided the requirements and conditions for such disbursements set forth herein are met. No more frequently than once per month, the Developer may request disbursement of TIF Bond Proceeds (and/or Excess TIF Revenues) only for Public Infrastructure Costs that the Developer has actually incurred (which includes construction management fees, or if to be paid directly to contractor, for work already performed) and for which disbursements have not been previously made. Public Infrastructure Costs that are eligible for reimbursement hereunder shall include any such costs incurred by Developer from and after January 1, 2013 which as of April 13, 2015 equals approximately \$887,000. Any Public Infrastructure Costs paid by Developer prior to the availability of Excess TIF Revenues or TIF Bond Proceeds remain eligible for reimbursement hereunder as and when Excess TIF Revenues or TIF Bond Proceeds become available.

**Section 6.2 Disbursement Requests.** When the Developer (or as applicable, its contractors) seeks disbursements for Public Infrastructure Costs that it has incurred or that are to be paid directly, the Developer shall deliver to the City an application for payment on Standard AIA forms (i.e., G702 or G703) or such other form agreed to by the City, together with the information and documentation required pursuant to the applicable sections of Article VI hereof as applicable for such disbursement and, in all cases, the following documentation in form and content reasonably satisfactory to the City (collectively, a "**Disbursement Request**"):

6.2.1 **Work Completed.** Written notice from the Developer or its designee of the performance of the portions of the work that constitute Public Infrastructure Projects as set forth on the applicable Schedule of Values for which the Developer is seeking reimbursement of associated Public Infrastructure Costs;

6.2.2 **Evidence of Costs Incurred.** Evidence that Developer has incurred the Public Infrastructure Costs for which reimbursement is being sought (or that the work has been performed if contractor is to be paid directly) and for which payment has not been previously made;

6.2.3 **Lien Waivers.** Duly executed waivers of mechanic's and materialmen's liens from the Developer's general contractor (partial or final, as applicable); a duly executed and acknowledged affidavit of the general contractor showing all subcontractors with whom the Developer's contractor has entered into subcontracts, the amount of such subcontract, the amount requested for any subcontractor in the Disbursement Request, the amount to be paid to the contractor from such progress payment, statements that there are no claims of mechanic's or materialmen's liens submitted to the contractor at the date of such Disbursement Request and that



all due and payable bills with respect to the work have been paid to date or shall be paid from the proceeds of such Disbursement Request;

6.2.4 Design Professional's Certificate. A certificate from the Design Professional or Approved Reviewing Consultant that the work included in the Disbursement Request is substantially consistent with the Plans approved by the City and all other Applicable Requirements (such certificate shall be in a form substantially similar to the Design Professional's Certificate form attached hereto as **Exhibit D**);

6.2.5 Indenture Requisition. All other items and information required to be submitted for a requisition of funds as set forth in the Indenture (if such Indenture exists), which shall include a certification with respect to each Disbursement Request: (a) the amount to be paid; (b) the nature and purpose of the obligation for which such payment is requested; (c) the person, firm, or corporation to whom such obligation is owed or to whom a reimbursable advance has been made; (d) that such obligation has been properly incurred and is a proper payment under the Indenture and has not been the basis of any previous advance; (e) that the Developer has not received notice of any mechanic's, materialmen's or other liens or right to liens or other obligations (other than those being contested in good faith) that should be satisfied or discharged before payment of such obligation is made; and (f) that such payment does not include any amount that is then entitled to be retained under any holdbacks or retainages provided for in any agreement; and

6.2.6 Other Information. Such other information, certificates, inspections, opinions and reports as may be reasonably requested by the City for the purposes of confirming that the TIF Bond Proceeds and/or Excess TIF Revenues are being used for the purpose intended.

At no time shall the Developer's failure to submit a Disbursement Request for any given month constitute or be construed as a waiver by the Developer of its rights hereunder to be reimbursed for such Public Infrastructure Costs.

**Section 6.3 City's Approval.** Within ten business days following the City's receipt of a Disbursement Request or re-submittal of a revised Disbursement Request (excepting Saturdays, Sundays, and legal public holidays), the City Project Manager shall provide to the Developer its written notice of approval or rejection, as the case may be, of the Disbursement Request, in the event that the City Project Manager rejects a Disbursement Request, the City Project Manager shall provide to Developer a specific explanation of the reason for rejection and the requirements to remedy the deficiency.

**Section 6.4 Payment of Disbursement Request.** Within ten business days following the City's receipt of a satisfactory Disbursement Request and provided that all of the applicable conditions precedent as set forth in Articles VI and VII herein (if applicable) been met, the City shall issue its approval for such Disbursement Request and direct the disbursement of such amount set forth in the Disbursement Request within 3 business days. The City shall have no obligation to approve a Disbursement Request unless all of the applicable conditions set forth in Articles VI and VII have been satisfied; provided, however, the City may waive Developer's satisfaction of any condition from time to time in its sole discretion. Acceptance or approval by the City or any inspector designated by the City of a Disbursement Request or payment made in response to a Disbursement Request shall not constitute final acceptance or approval by the City of defective work.

**Section 6.5 Limited Liability of City.** The Developer agrees that any and all obligations of the City arising out of or related to this Agreement are special obligations of the City, and the City's obligations to make any payments hereunder are restricted entirely to available

TIF Bond Proceeds and Excess TIF Revenues (plus such additional TIF Revenues as provided under the Indenture) as provided pursuant to the terms of the Indenture, and from no other source. No member of the City Council, the Mayor, or any other past, present or future City employee, officer, attorney, agent or representative shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

**Section 6.6**     **Audit.** The City or its designee shall have the right, during normal business hours in the Developer's offices (or such other place designated by the parties) and upon the giving of ten days prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer with respect to any of the Public Infrastructure Projects and any bids taken or received for the construction thereof or materials therefor.

For purposes of Articles III, IV, V, VI, VII and VIII herein, Developer shall include Developer or Developer Affiliate.

## **ARTICLE VII - CONDITIONS TO DISBURSEMENTS**

**Section 7.1**     **Conditions Precedent to Certain Initial Disbursements.** At least 15 business days prior to the first Disbursement Request for Public Infrastructure Costs for each Public Infrastructure Project, the Developer shall provide the City with the following with respect to each Public Infrastructure Project or portion thereof:

7.1.1     **Evidence of Title.** An affidavit in the form attached as **Exhibit G** by the Developer confirming that the Developer has title to or a valid easement over or other valid right to construct upon the land upon which such Public Infrastructure Project is to be constructed.

7.1.2     **Release of Mortgage or other Lien.** To the extent that the Property upon which the Public Infrastructure Project is constructed is to be conveyed to the City, if such Property is encumbered by any mortgage or other lien, Developer shall provide a release or written confirmation that such release will be granted or subordination provided from the holder of such mortgage or any other lien.

7.1.3     **Insurance Requirements.** A certificate of insurance for each Public Infrastructure Project naming the City as an additional insured and showing the following types of insurance and in the amounts set forth below, all of which must be from companies with an "A-" rating or better as rated by A.M. Best:

7.1.3.1     **Workers' Compensation Insurance.** Workers Compensation Insurance, as prescribed by applicable law covering all employees of the Developer's general contractor(s) and Employer's Liability coverage of Developer with limits as required by law.

7.1.3.2     **Commercial General Liability Insurance (Primary and Umbrella).** Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence for bodily injury, personal injury, and property damage liability. The City is to be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.3.3 Automobile Liability Insurance (Primary and Umbrella).

When any motor vehicle (owned, non-owned and hired) is used in connection with work to be performed in connection with a Public Infrastructure Project, the general contractor for such Public Infrastructure Project shall provide (or cause to be provided by its subcontractors) Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage if such coverage is not maintained by the Developer. The City shall be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.3.4 Builders Risk Insurance. When the general contractor for a Public Infrastructure Project undertakes any vertical construction in connection with a Public Infrastructure Project, including improvements, and/or repairs, it shall provide, or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery, and fixtures (that are or will be part of the Public Infrastructure Project. The City shall be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.3.5 Contractor's Pollution Liability. When any environmental remediation work is performed in connection with a Public Infrastructure Project which may cause a pollution exposure, if available on commercially reasonable terms, Contractor's Pollution Liability shall be provided on claims made policy with limits of not less than \$1,000,000 insuring bodily injury, property damage and environmental remediation, cleanup costs and disposal. The City shall be named as an additional insured or loss payee as applicable with respect to such coverage.

7.1.4 Survey. If the Public Infrastructure Project is to be constructed upon property to be conveyed to the City, a preliminary survey meeting the reasonable requirements of the City and sufficient for preparing a legal description for recording a mortgage of the land upon which such Public Infrastructure Project is to be located and which boundary survey will be the basis of the legal description for the real property to be conveyed and/or dedicated to the City.

7.1.5 Environmental. Evidence reasonably satisfactory to the City that any environmental contamination located within the Property upon which such Public Infrastructure Project is to be located either is, or will be, remediated, contained, or otherwise addressed in a manner as required under state and federal laws and regulations to permit the use of such land for its intended purpose. Such satisfactory evidence shall include but not be limited to as-built drawings of engineering controls to address environmental conditions for such land that comply with control methods that have been approved by DHEC, and if applicable, the United States Environmental Protection Agency. The City acknowledges the existence of hazardous materials on the land and agrees to accept the Public Infrastructure Projects and applicable land provided that any environmental contamination located within the Property upon which such Public Infrastructure Project is to be located either is, or will be, remediated, contained, or otherwise addressed in a manner consistent with an approved Work Plan with either DHEC or EPA or other method acceptable to the City, and provided that Developer has complied with applicable soil management plans.

7.1.6 Compliance with Requirements; Permits. A certificate of the Developer's Design Professional or Approved Reviewing Consultant that the Public Infrastructure Project and the land on which it is located will comply with all Applicable Requirements (except those which might be contractually imposed under the Development Agreement) and that all permits necessary for construction have been obtained for such portion of the Public Infrastructure Project or can be obtained in the ordinary course.

7.1.7 Construction Documents. Copies of the applicable Construction Documents, including approved Plans for the applicable Public Infrastructure Project, and a certificate from the Design Professional that the Plans for such work are in compliance with all applicable laws, zoning and other ordinances, rules, regulations, and restrictions affecting the performance of such work, and a completion and draw schedule and a breakdown of direct and indirect costs of the work on which all payment requests by the Developer will be based. The Developer shall not modify or amend any of the Construction Documents in any material respect without the prior written consent of the City, which consent shall not be unreasonably withheld, provided that the Construction Documents shall be amended as reasonably required to comply with any approved changes to the Plans or otherwise as reasonably requested by Developer with respect to change orders.

7.1.8 Collateral Assignment of Contracts. A collateral assignment to the City of the portion of Construction Documents applicable to the Public Infrastructure Project, all of which shall be reasonably acceptable to the City as to form and content, together with all necessary consents from the Design Professional and general contractor.

7.1.9 Payment and Performance Bonds. Payment and performance bonds as required under Section 5.10 hereof.

7.1.10 Notice of Project Commencement. Notice of Project Commencement with proof of filing as required under Section 5.15 hereof.

**Section 7.2 Conditions Precedent to Subsequent Disbursements.** All Disbursement Requests subsequent to the initial Disbursement Request for a Public Infrastructure Project shall be subject to the following conditions at the time of the Disbursement Request:

7.2.1 Prior Conditions. All other applicable conditions set forth in Section 6.2 shall have been met to the satisfaction of the City or waived in writing by the City.

7.2.2 Disbursement Request. The City and if applicable the Trustee shall have received a Disbursement Request conforming to the requirements set forth in Section 6.2 of this Agreement and the Indenture.

7.2.3 City Inspection. The City Project Manager shall have determined, in accordance with the provisions of this Agreement, that the portion of the work that is the subject of the Disbursement Request has been completed in accordance with the Plans, this Agreement and all other Applicable Requirements, such determination to be made within five business days (excepting Saturdays, Sundays, and legal public holidays) of the date the City receives the Disbursement Request.

7.2.4 Certificate. The Developer shall furnish to the City the items required to be provided pursuant to Sections 7.1.1 and 7.1.2.

**Section 7.3 Conditions for All Payments.** Unless otherwise expressly agreed in writing by the City, the obligation of the City to make any payment to the Developer under this Agreement is subject to the satisfaction of the following conditions at the time of making such payment;

7.3.1 Representations True. All representations and warranties of the Developer under this Agreement and all other agreements delivered by the Developer in

connection with this Agreement for the benefit of the City shall be true and correct in all material respects as of the date of the payment.

7.3.2 No Defaults. The Developer shall not have received notice that it is in default under the terms of this Agreement or any of the Construction Documents, or any other related agreement with or for the benefit of the City not cured within the time provided herein or therein.

7.3.3 Compliance. The Developer shall have complied in all material respects with all agreements and satisfied in all material respects all conditions on its part to be performed or satisfied at or prior to the date of such payment.

7.3.4 No Damage. The work shall not have been materially injured or damaged by fire or other casualty, or if so damaged, provisions reasonably satisfactory to the City have been made to effect necessary restoration, repair or compensation to the City.

7.3.5 Certificate. If required by the City, the Developer shall furnish to the City a certificate dated as of the date of such request for payment and executed by an authorized Developer representative, confirming the satisfaction of any one or more conditions of the foregoing sections 7.3.1 through 7.3.4.

**Section 7.4 Surveys.** Prior to the final disbursement on a particular Public Infrastructure Project, if land or infrastructure is to be conveyed to the City, then upon the request of the City, Developer shall provide a current certified survey of as built conditions, showing all improvements, easements (existing and proposed, labeled accordingly), rights of way, utilities, means of ingress and egress, setback lines and encroachments, if any, acceptable to the City.

**Section 7.5 Additional Terms or Agreements.** The City and Developer agree that they shall execute amendments to this Agreement or other documents as may be reasonably necessary to effectuate this Agreement.

## **ARTICLE VIII - CITY'S REVIEW AND INSPECTION RIGHTS; CONVEYANCE TO THE CITY**

**Section 8.1 City Project Manager.** The City shall designate a qualified individual to act as City Project Manager for the purposes of monitoring the Developer's construction of the Public Infrastructure Projects in accordance with all Applicable Requirements of this Agreement. The City Project Manager shall coordinate with all City departments in a timely manner in order to ensure that that he or she has the necessary environmental, engineering and other resources readily available to discharge the duties of this position. The City Project Manager shall respond as promptly as reasonably possible to requests for approval and permits from Developer. Failure of the City Project Manager to act upon or respond to (including but not limited to requests for additional information) a Developer request accompanied with all required documentation within 30 calendar days shall be deemed approval by the City, and Developer shall have the rights to proceed as provided in Section 6-29-1150 of the S.C. Code of Laws. Costs, as provided for herein, properly allocable to the City and/or the City Project Manager, shall be payable from TIF Bond Proceeds, provided that such work and fees by or on behalf of the City or the City Project Manager shall be properly documented by the City and provided that such fees and expenses shall not exceed \$150,000 annually and shall not exceed on average one percent of the aggregate cost of the applicable Public Infrastructure Project and shall not exceed in aggregate the amount set forth in **Exhibit B**. The City shall notify the Developer of the name and address of the City Project

Manager. All inspectors for the City shall, upon entry to the Public Infrastructure Project site, check in with the site superintendent or project manager. While on the site, all inspectors for the City shall comply at all times with all applicable safety guidelines required by applicable law and reasonable site safety rules imposed by the Developer's contractor. The City shall reasonably require such inspectors to perform their duties in a timely manner.

**Section 8.2 City Review Processes.** Each Public Infrastructure Project shall be subject to the Applicable Requirements for review and permitting. As part of City's regular plan review process, the Plans for each Public Infrastructure Project shall be reviewed by the City prior to commencement of construction, with the anticipation that such Public Infrastructure Project is to be built for public dedication and acceptance. Developer shall submit its proposed Plans for a Public Infrastructure Project to the City Project Manager for review and approval. The City Project Manager shall be responsible for coordinating and compiling comments from any relevant City departments. Within 30 calendar days of such submittal, the City Project Manager shall provide any comments on the proposed Plans and be available to meet with the Design Professionals. Within 30 calendar days of re-submittal of any revised Plans, the City Project Manager shall respond with any further comments. In the event that the City Project Manager fails to substantively respond to Developer within 10 business days after notice from Developer to the City that the City Project Manager has failed to respond within the required time period, the submitted Plans shall be deemed approved. Approval of Plans shall not be unreasonably withheld so long as the Plans conform to the Applicable Requirements and the other terms of this Agreement. Any proposed modifications to approved Plans shall be submitted to the City Project Manager and shall be subject to the process set forth above. In connection with its review, the City Project Manager shall, in addition to the inspecting Design Professional, monitor the construction for compliance with all Applicable Requirements. Provided, however, such review and monitoring shall not impose any liability on the City for compliance of any Public Infrastructure Project or any part thereof with any such requirements. Except as expressly set forth herein, nothing in this Agreement shall be deemed to modify, amend, alter, or waive any of the procedures and requirements as prescribed by the City for review, approval, dedication, and acceptance of the Public Infrastructure Projects. In the event of any dispute with regard to the Plans, Project Schedules, Schedule of Values, or acceptance of completed Public Infrastructure Projects, the City Project Manager and Developer's applicable Design Professionals shall meet and attempt to resolve such dispute. In the event that the dispute is not resolved within 30 calendar days, the City Project Manager and the Design Professionals shall select a third party qualified professional to resolve the issue. When a certain number of "business" days is specified it is understood that this does not include weekends and holidays observed by the City.

**Section 8.3 Completion; Acceptance.** Upon receipt of notice from the Developer of the completion of construction of an applicable Public Infrastructure Project, the City Project Manager shall inspect the same to determine compliance with all Applicable Requirements. When all or a portion of a Public Infrastructure Project is to be conveyed to the City, Developer shall provide the City Project Manager with "as-built" drawings (as appropriate and customary for a particular project), applicable warranties, plats, deeds, bills of sale, and other documentation as may be necessary to cause such Public Infrastructure Project to be dedicated and/or conveyed to the City. After the City determines that a Public Infrastructure Project is in substantial compliance with all Applicable Requirements, the City Project Manager shall use reasonable efforts to place the item on the agenda at the earliest practical regularly scheduled meeting of City Council for action by City Council to accept conveyance and/or formal dedication of the applicable Public Infrastructure Project. Individual Public Infrastructure Projects and applicable land will be accepted by the City upon tender by the Developer provided that such Public Infrastructure Projects are completed in accordance with the terms hereof. Developer acknowledges that it is required to complete all Public Infrastructure Projects only if required and funded under this Agreement and, with respect to any Public Infrastructure Project to be conveyed to City upon

completion, to convey the same to the City or other appropriate public entities, free and clear of all liens and encumbrances subject to applicable deed restrictions in place with DHEC and/or EPA. In compliance with the provisions of the Indenture, such conveyances shall be made in such fashion and within such time as shall be necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the TIF Bonds.

**Section 8.4 Non-Compliance.** If in the course of its review of a Public Infrastructure Project the City determines that the Developer has failed to construct a Public Infrastructure Project in accordance with all Applicable Requirements, the City shall provide specific, written notice of how the Public Infrastructure Project does not comply with the Applicable Requirements. In the event that the Developer fails to diligently pursue and complete the cure of such defects within 30 days after written notice from the City of such breach (as such date shall be extended if Developer timely commenced such cure and is proceeding with due diligence to complete such cure), the City shall have, in addition to any other rights and remedies which may be available under this Agreement or at law or in equity, the right to draw on the TIF Bond Proceeds to cure such defects and reduce the amount of TIF Bond Proceeds to which the Developer is entitled under this Agreement by the amount necessary to cure such defects.

**Section 8.5 Failure to Complete.** If after commencement of physical work on an individual Public Infrastructure Project and Developer has been reimbursed for related Public Infrastructure Costs paid on work performed, the Developer fails to complete such Public Infrastructure Project within the time period provided herein (excluding delays due to *force majeure*), the City may provide specific, written notice of such failure. In the event that the Developer fails to diligently pursue and complete that Public Infrastructure Project within 30 days after written notice from the City of such failure as such date shall be extended if Developer timely commenced such cure and is proceeding with due diligence to complete such cure, the City shall have, in addition to any other rights and remedies which may be available under this Agreement or at law or in equity, the right to draw on the TIF Bond Proceeds to complete the Public Infrastructure Project and reduce the amount of TIF Bond Proceeds to which the Developer is entitled under this Agreement by the amount necessary to complete such Public Infrastructure Project. For purposes of this Agreement, *force majeure* shall include but not be limited to delays due to strikes, lock-outs, war, civil disturbance, natural disaster, acts of terrorism or acts of God, weather or other similar events beyond the control of the party which delay performance, including unexpected or unanticipated environmental subsurface, geotechnical or structural conditions (including historical artifacts) encountered during construction and/or delays due to USEPA, SCDHEC or other governmental reviews and approvals with respect to environmental conditions at the Property.

**Section 8.6 Approved Reviewing Consultants.** In order to expedite the review and approval process by the City, the Developer may use an Approved Reviewing Consultant to perform services normally performed by City employees; however, final approval of any plans or inspections shall be made by the designated City official, subject to the terms of this Agreement. The City Project Manager shall ensure that the designated City official shall expeditiously review and act on the recommendations and findings of an Approved Reviewing Consultant. If the Approved Reviewing Consultant is providing services related to a Public Infrastructure Project, the cost of the Approved Reviewing Consultant shall be included in the Public Infrastructure Costs.

## **ARTICLE IX - TERMINATION**

**Section 9.1 Events of Default.** The following events shall constitute grounds for the City, at its option, to terminate this Agreement, without the consent of the Developer.

9.1.1 Bankruptcy. The Developer shall voluntarily file for reorganization or other relief under any federal or state bankruptcy or insolvency law, or the Developer shall have any involuntary bankruptcy or insolvency action filed against it which is not dismissed within 180 days, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of its assets, or shall suffer an attachment or levy of execution to be made against the property it owns which is not dismissed within 180 days.

9.1.2 Stop Work. The Developer shall for reasons other than *force majeure* or other reasonable causes (reasonable causes including insufficient TIF Bond Proceeds or Excess TIF Revenues to reimburse Developer for Public Infrastructure Costs) abandon or substantially suspend construction of a Public Infrastructure Project for which a construction contract has been issued or the Developer abandons the development of the Property in its entirety and such abandonment or suspension is not cured or remedied within 60 days after written demand is made by the City unless Developer is proceeding diligently to complete such cure.

9.1.3 Covenant Default. The Developer shall breach any material covenant or default in the performance of any material obligation under this Agreement, any of the Construction Documents, or any other agreement with or for the benefit of the City unless Developer is proceeding diligently to cure such breach or default.

9.1.4 Misrepresentation. The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with the development of the Property or any offering document or bond purchase agreement used in connection with the sale of the TIF Bonds, or any representation or warranty contained in this Agreement shall have been or shall be untrue or incorrect in any material respect when made or when deemed made.

9.1.5 Invalidity. The Developer shall at any time challenge the validity of the Development Agreement between Developer and City in effect at that time, any of the TIF Bonds, this Agreement, any of the documents related thereto, or the levy of any *ad valorem* property tax or the imposition of any assessment under the Municipal Improvements Act or other charge, or any of the foregoing shall be deemed invalid, illegal or unenforceable and Developer refuses to enter into such modifications or new agreements as required to establish the validity, legality, or enforceability thereof,

**Section 9.2 Right to Terminate**. If any such event of default occurs and is not cured within the applicable cure period, as extended by Developer's diligent efforts to cure such default the City shall give written notice of its knowledge thereof to the Developer and the Developer agrees to meet and confer with the City or appropriate City staff as to options available to assure timely completion of any Public Infrastructure Project. Such options may include, but are not limited to, the termination of this Agreement by the City. If the City elects to terminate this Agreement, the City shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the City to receive such notice) of the grounds for such termination and allow the Developer a minimum of 90 days to eliminate or mitigate to the satisfaction of the City the grounds for such termination; provided that no cure period shall apply for any voluntary bankruptcy filing listed in Section 9.1.1; and provided that in the event of a default listed in Section 9.1.2 or Section 9.1.5, no additional cure period shall be provided beyond the applicable cure period. Such period shall be extended if the Developer is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof) the default has not been cured, the City may then terminate this Agreement. In the event of the termination of this Agreement, the Developer is entitled to reimbursement for work related to the Public Infrastructure Project undertaken prior to the termination date of this



Agreement solely from the available TIF Bond Proceeds and Excess TIF Revenues according to the terms and conditions set forth in this Agreement.

**Section 9.3 Cease Payments.** Notwithstanding the foregoing, so long as any event listed in any of Section 9.1.1 through 9.1.5 above has occurred, notice of which has been given by the City to the Developer, and such event has not been cured or otherwise mitigated by the Developer, the City may in its discretion cease making payments for the Public Infrastructure Costs, provided that the Developer may receive payment of the Public Infrastructure Costs that have been incurred for work completed at the time of the occurrence of an event listed in Section 9.1 above upon submission of a Disbursement Request and compliance with the Applicable Requirements. In the event a cessation of payment occurs pursuant to this Section, such payment shall resume upon cure or appropriate mitigation by the Developer.

**Section 9.4 Additional Remedies.** In addition to the rights set forth above, the City shall have the right upon any termination of this Agreement to redeem any of the TIF Bonds in accordance with the provisions of the TIF Bond Ordinance and the Indenture and shall have the right to (but shall not be required to) execute contracts for or perform any remaining work related to the Public Infrastructure Projects not otherwise completed and use all or any portion of the Bond Proceeds for such purposes, and, except as otherwise provided herein, the Developer shall have no claim or right to any further payments for the Public Infrastructure Costs hereunder. In addition to any of the foregoing rights and remedies, the City may pursue all other rights and remedies available to it under this Agreement and otherwise available to it at law or in equity including the remedy of specific performance. Without limiting the generality of the foregoing, the City shall be entitled to take title, without additional compensation other than payment of any outstanding Public Infrastructure Costs to the extent of available remaining funds available hereunder, to all Public Infrastructure Projects previously funded under this Agreement, but the City shall not be required to do so until any such Public Infrastructure Project is completed to the City's satisfaction in accordance with this Agreement.

**Section 9.5 Waivers.** To the extent permitted by law, the City may waive a specific breach or default by the Developer hereunder by delivering to the Developer notice of such specific waiver in writing signed by the Mayor or his assigns. Provided, however, no waiver of any default or breach by the Developer hereunder shall be implied from any delay or omission by the City to take action on account of such default, and no such express waiver shall affect any default other than the default specified in the waiver and it shall be operative only for the time and to the extent therein stated. No advance of TIF Bond Proceeds shall constitute a waiver of any of the provisions, conditions or obligations set forth herein, nor shall any advance of TIF Bond Proceeds constitute an affirmation by the City that all provisions, conditions and requirements of this Agreement have been met.

**Section 9.6 Assignment of Contracts.** Should the City terminate this Agreement as set forth herein, the City shall have the right, but not the obligation, to require the Developer to assign to the City each contract agreement for any of the Public Infrastructure Projects to be completed under this Agreement, provided (1) such assignment will be effective only after termination of the Agreement and only for the contract agreements which the City accepts by notifying the Developer and applicable contractor in writing; and (2) this assignment is subject to the prior rights of a surety, if any, obligated under any surety bonds relating to this Agreement and/or any Public Infrastructure Project. Developer shall have the right to assign this Agreement with the consent of the City, such consent not to be unreasonably withheld.

**Section 9.7 Developer's Option to Terminate.** If, through no fault of the Developer, the City wrongfully rejects or fails to approve a Disbursement Request within the timeframe set forth in Section 6.4 of this Agreement, then the Developer may, upon the expiration of 30 days

written notice to the City (hereinafter the "**Cure Period**"), terminate this Agreement if the City has not (i) approved the Disbursement Request or (ii) provided valid written explanation of the City's rejection of the Disbursement Request within the Cure Period. In addition to its rights as provided herein, Developer shall have such other remedies as are available at law or in equity as a result of any breach by the City of its obligations hereunder.

9.7.1 Late Payment Costs. If the Developer incurs additional costs following expiration of the Cure Period as a direct result of late payment of any Disbursement Request caused by the City's failure to approve or wrongful rejection of same, the Developer shall be entitled to recover such additional costs as a Public Infrastructure Cost in its next Disbursement Request, provided that if adequate funds are not available within the applicable Schedule of Values, then the City shall be liable for such additional cost. Notwithstanding the foregoing, the City shall not be liable to the Developer for any lost profits or consequential damages that may arise out of the late payment of any Disbursement Request unless due to wrongful rejection.

9.7.2 Delays to Critical Path Resulting from Late Payment. If the critical path of a Project Schedule is delayed as direct result of late payment of any Disbursement Request caused by the City's failure to approve or wrongful rejection of same, the Developer shall be entitled to an extension of time in such Project Schedule commensurate to the delay in the critical path.

## **ARTICLE X - GENERAL MATTERS**

**Section 10.1 Term.** This Agreement shall be effective as of the Effective Date and shall terminate upon the earlier to occur of (1) termination pursuant to Article IX, and (2) acceptance by the City of the final Public Infrastructure Project to be constructed by the Developer and receipt by Developer of TIF Bond Proceeds and Excess TIF Revenues as contemplated by the MOU. If the Public Infrastructure Projects have not been completed, conveyed, dedicated and accepted in full by such date, the City may declare the Developer to be in default and pursue all available legal and equitable remedies against the Developer. Nothing in this Section 10.1 shall be construed as a limitation of any other right or remedy that the City may have elsewhere under this Agreement.

**Section 10.2 City Council Legislative Discretion.** Except as limited by any Development Agreement executed between the City and Developer, the use by the City of its reasonable efforts shall in no way impair or limit the authority of the City Council to exercise its discretion in taking legislative action and shall in no way require City Council to take any legislative action. In satisfying their obligations under this Agreement, the City and the Developer shall act diligently and in a timely fashion.

**Section 10.3 Notices.** All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service; (2) electronic communications, whether by telex, facsimile, telegram or other telecopy, with proof of receipt by addressee; (3) overnight courier; or (4) registered or certified first class mail, postage prepaid, return receipt requested.

To whom notice is to be given:

If to the City;                      City of Charleston  
   116 Meeting Street

Charleston, SC 29401  
ATTN: Chief Financial Officer

Department of Public Services  
75 Calhoun Street  
Charleston, South Carolina 29401  
ATTN:

With a copy to: Office of Corporation Counsel  
50 Broad Street  
Charleston, SC 29401  
ATTN: Deputy Corporation Counsel

If to Developer: Ashley River Investors, LLC  
201 Sigma Drive, Suite #400  
Summerville, SC 29483  
Attn: Mark Lewis

Ashley River, Investors, LLC  
c/o Branch Properties  
3340 Peachtree Road, NE  
Suite 600  
Atlanta, GA 03026  
Attn: Richard Lee

With a copy to: George Bullwinkel, Esq.  
Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, SC 29402

Any Party may change the address for notices to such Party by written notice to the other Parties to this Agreement. Notice given by personal service shall be effective upon the date delivered, if personally delivered, or the date of attempted delivery, if refused. Notice given by mail shall be effective on the third business day after posting. Notice by overnight courier shall be effective on the next business day following delivery of such notice to such courier. Notice given by fax shall be effective on the date of completion of the fax transmission, so long as such notice is further sent by personal service, the U.S. Mail, or overnight courier, as aforesaid.

**Section 10.4 Amendment.** The City and the Developer may, by mutual consent, agree in writing to amend the terms and conditions set forth in this Agreement and/or any exhibit attached hereto; provided, however, that Developer's successor and assigns shall have no right to amend this Agreement unless such right is expressly conveyed by Developer to such successor or assign. No purported oral amendment to this Agreement shall be binding or enforceable.

**Section 10.5 Entire Agreement.** This Agreement and the related agreements executed by the Parties simultaneously herewith set forth all agreements, understandings, and covenants between the Developer and the City relative to the subject matter hereof.

**Section 10.6 Waiver.** Waiver by the City or the Developer with respect to any breach or default under this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by the City or the Developer.

**Section 10.7 Remedies Cumulative.** The remedies available to the Parties are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

**Section 10.8 Disclaimer.** Nothing contained in this Agreement, nor any act of the City, shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

**Section 10.9 Headings.** The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

**Section 10.10 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

**Section 10.11 Severability.** If any section, subsection paragraph, sentence, clause or phrase of this Agreement or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Agreement, or any part thereof.

**Section 10.12 Governing Law.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to its conflicts of law principles.

**Section 10.13 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns to whom the rights and obligations are Specifically covered or assigned. Nothing herein shall prohibit the alienation, sale or any other transfer of all or any portion of the Property or any rights, interests or obligations therein, provided that no such alienation, sale or any other transfer of all or any portion of the Property or the rights therein shall operate to release the Developer from its obligations or liability hereunder as to that portion of the Property so transferred, without the prior written consent of the City which consent may be given or withheld in the City's sole discretion in each instance, and provided such transferee agrees to comply with the terms of this Agreement.

**Section 10.14 Force Majeure.** Neither the City nor the Developer, nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty or act of terrorism, strike, widespread shortages of construction materials, governmental (including USEPA or SCDHEC) delays, unusually adverse weather conditions such as, by way of illustration and not limitation, hurricanes, flooding, tornadoes or cyclones, unexpected environmental conditions and other material adverse events or conditions beyond the reasonable control of the party affected which in fact delay such party in discharging its obligations hereunder.

**Section 10.15 Order of Precedence.** Should there be any conflict between the provisions of this Agreement and the Indenture, the order of precedence shall be the Indenture and then this Agreement.

**Section 10.16 No Third Party Beneficiary.** This Agreement is for the sole and exclusive benefit of the City, the Developer and Developer Affiliates and their successors and assigns. No other person or entity is an intended third party beneficiary or shall have the right to enforce any of the provisions of this Agreement.

**Section 10.17 Recovery of Attorney Fees.** In the event of litigation or other legal action relating to enforcement of rights under this Agreement, the substantially prevailing party shall be entitled to recover all litigation expenses, including attorneys' fees and court costs, from the non-prevailing party.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first written above.

**WITNESSES:**

**CITY OF CHARLESTON, SOUTH  
CAROLINA**

\_\_\_\_\_

By: \_\_\_\_\_

John Tecklenburg, Mayor

\_\_\_\_\_

Attested to:

\_\_\_\_\_  
Vanessa Turner-Maybank, Clerk of Council

**[SIGNATURE PAGE CONTINUES ON FOLLOWING PAGE]**

[SIGNATURE PAGE CONTINUED FROM PREVIOUS PAGE]

WITNESSES:

ASHLEY RIVER INVESTORS, LLC

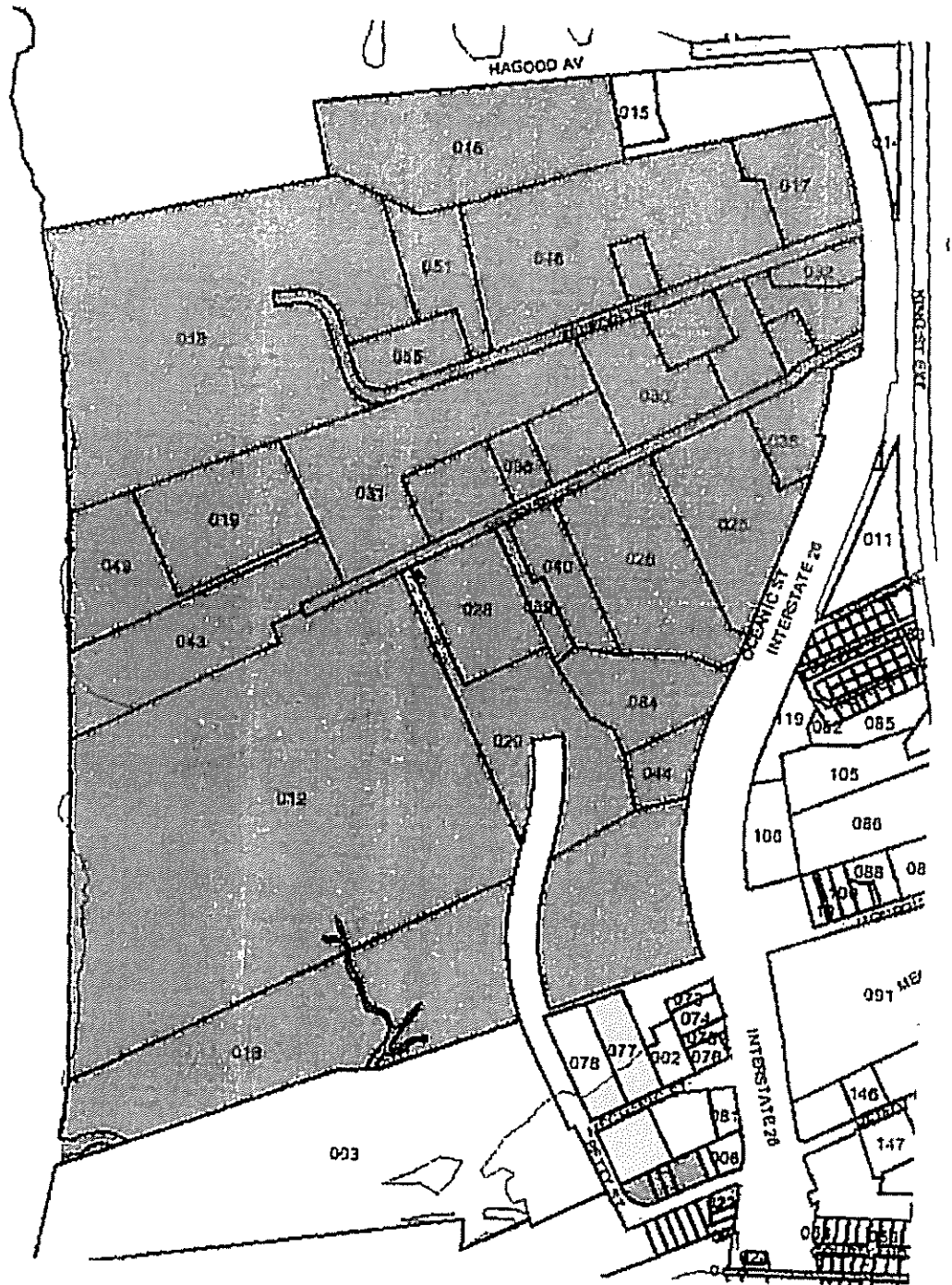
\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

Exhibit A





Tax Parcels

464-00-00-012	Ashley I, LLC
464-00-00-013	Charleston County Parks and Recreation Commission
464-00-00-025	Ashley II of Charleston, LLC
464-00-00-026	Ashley II of Charleston, LLC
464-00-00-028	Ashley II of Charleston, LLC
464-00-00-029	Ashley I, LLC
464-00-00-030	North Charleston Sewer District
464-00-00-039	Ashley II of Charleston, LLC
464-00-00-040	Ashley II of Charleston, LLC
464-00-00-044	Monrovia Union Cemetery
464-13-00-013	Ashley II of Charleston, LLC
464-13-00-012	Ashley II of Charleston, LLC
464-13-00-011	Ashley II of Charleston, LLC
464-13-00-008	Ashley II of Charleston, LLC
464-13-00-023	Ashley II of Charleston, LLC
466-00-00-016	Ashley II of Charleston, LLC
466-00-00-017	Ashley II of Charleston, LLC
466-00-00-018	Ashley II of Charleston, LLC
466-00-00-019	Ashley I, LLC
466-00-00-028	Ashley I, LLC
466-00-00-029	Ashley I, LLC
466-00-00-030	Ashley I, LLC
466-00-00-031	Ashley I, LLC
466-00-00-032	Ashley II of Charleston, LLC
466-00-00-033	Ashley II of Charleston, LLC
466-00-00-034	Ashley II of Charleston, LLC
466-00-00-035	Ashley I, LLC
466-00-00-036	Ashley I, LLC
466-00-00-037	Ashley II of Charleston, LLC
466-00-00-043	Parker Real Estate LP
466-00-00-044	Ashley II of Charleston, LLC
466-00-00-046	Ashley II of Charleston, LLC
466-00-00-049	Ashley I, LLC
466-00-00-051	Ashley II of Charleston, LLC
466-00-00-055	Robin W. Hood, II

**Exhibit B**

	<b>Cost</b>
<b>Phase 1 Projects (Current Outstanding Bond Balance)</b>	<b>10,477,038</b>
<b>Phase 2 Projects</b>	
Stormwater/Fill/Sewer (Milford South)	11,867,000
Public Infrastructure Remediation (Milford South)	1,500,000
Stormwater/Fill/Sewer (NW Phase)	1,500,000
Public Infrastructure Remediation (NW Phase)	2,380,000
Contribution to Skate Park	500,000
Construction Manager (3%)	517,410
<b>Phase 2 Projects Subtotal</b>	<b>18,264,410</b>
<b>Phase 3 (A&amp;B) Projects</b>	
Roads & Infrastructure	8,346,000
Public Parks	890,000
SC&EG Gas Regulating Station	128,000
SC&EG Power Line Relocation	55,000
Rutledge Ave Roundabout	822,000
Rutledge Ave Streetscape	100,000
King Street Improvements	1,475,000
Public Infrastructure Demolition	240,000
Construction Manager (3%)	361,680
<b>Phase 3 Projects Subtotal</b>	<b>12,417,680</b>
<b>Phase 4 Projects</b>	
Roads & Infrastructure	2,803,000
Public Parks	871,000
Public Infrastructure Demolition	56,000
Construction Manager (3%)	111,900
<b>Phase 4 Projects Subtotal</b>	<b>3,841,900</b>
<b>Phase 5 Projects</b>	
Roads & Infrastructure	3,183,000
Public Parks	1,570,000
King Street Signalization	192,000
Construction Manager (3%)	148,350
<b>Phase 5 Projects Subtotal</b>	<b>5,093,350</b>

<b>Public Works Facility<sup>1</sup></b>	<b>18,000,000</b>
<b>Phase 6 Projects</b>	
Stormwater/Fill/Sewer (NE Phase)	1,361,000
Roads & Infrastructure	-
Public Parks/Community Center	696,000
Public Infrastructure Demolition	175,000
Construction Manager (3%)	72,960
<b>Phase 6 Projects Subtotal</b>	<b>2,504,960</b>
<b>Phase 7 Projects</b>	
Parking Decks/Roads/Infrastructure/Parks <sup>2</sup>	42,790,000
<b>Phase 7 Projects Subtotal</b>	<b>42,790,000</b>
<b>Total Project Costs<sup>3,4,5</sup></b>	<b>113,389,338</b>

<sup>1</sup>A construction management fee of 5% is included in these numbers.

<sup>2</sup>A construction management fee of 3% is included in these numbers.

<sup>3</sup>Does not include capitalized interest, inflation or bond issuance costs.

<sup>4</sup>Does not include the City Project Manager fee contemplated by Section 8.1 of the Public Infrastructure Agreement

<sup>5</sup>These reimbursable costs include remediation, operation and maintenance incurred with respect to such projects.

## IMPROVEMENT PLAN FOR THE MAGNOLIA MUNICIPAL IMPROVEMENT DISTRICT

### INTRODUCTION

In adopting the Municipal Improvement Act of 1999 (the "Act"), the South Carolina General Assembly authorized cities to establish Municipal Improvement Districts within which an Improvement Plan could be implemented. An Improvement District, as defined in the Act, means any area within the municipality designated by a city council. An Improvement Plan, as defined in the Act, means an overall plan by which a city council proposes to effect improvements within an improvement district to preserve property values, prevent deterioration of urban areas, and preserve the tax base.

The Act specifically notes that such a document "includes an overall plan by which the governing body proposes to effect improvements within an improvement district in order to encourage and promote private or public development within the improvement district." By resolution considered on May 29, 2007, the Magnolia Improvement District was designated by the City Council of the City of Charleston, South Carolina (the "City Council") and the "Improvement Plan for the Magnolia Municipal Improvement District," an Improvement Plan as contemplated by the Act, for the Magnolia Municipal Improvement District (the "Improvement District") was approved by City Council. By ordinance adopted July 17, 2007 (the "MID Ordinance"), City Council established the Improvement District. This document constitutes the amended "Improvement Plan for the Magnolia Municipal Improvement District." As approved by ordinance adopted by City Council on August 18, 2015.

#### Background

Publicly-owned infrastructure improvements of the type described at Section 5-37-20(2) of the Act are to occur on approximately 210 acres of former industrial sites located along the Ashley River on the upper peninsula of Charleston, now known generally as "Magnolia." The collection of real property in the Improvement District is the result of an assemblage of properties begun in 2002 by Ashley I, LLC and Ashley II of Charleston, LLC ("Ashley") in close cooperation with the City of Charleston, South Carolina (the "City").

The goals for this area include improvements to be enjoyed by those neighborhoods directly impacted by Magnolia as well as all who will participate in activities in this revitalized part of the City as a result of:

- 1) Reclamation of industrial land for new residential and commercial development on the upper peninsula of the City,
- 2) Accommodation of growth in the region without contributing to suburban sprawl, and,
- 3) Construction of public infrastructure improvements, including but not limited to, water, stormwater and sanitary sewer facilities, which are expected to serve as a catalyst for dynamic growth of new jobs, preservation and enhancement of property values and an improved quality of life.

Beginning in 2003, a number of charrettes and less formal meetings were held in nearby neighborhoods to collect the thoughts, wishes and suggestions of both citizens and urban design professionals as to the appropriate means of redeveloping the Improvement District. The early sessions resulted in the adoption of the "Charleston Neck Plan" by the City Council on December 2003 (the "2003

Neck Plan"). Regular updates and meetings have occurred in the neighborhoods over the intervening periods.

The 2003 Neck Plan envisioned the area that makes up the Improvement District as a carefully planned, mixed-use "new urban" style community: respectful of history, of the environment and of the existing nearby neighborhoods, while delivering new residential dwelling units (suitable for citizens of all economic means), new commercial and retail opportunities, substantial green spaces, and waterfront parks accessible to the public. In addition, the 2003 Neck Plan called for significant upgrades to infrastructure on the upper peninsula, including a rationalization of the road system and the implementation of public transit systems.

In 2004, to support the ambitious redevelopment program, the City proposed the creation of a Tax Increment Financing District (the "TIF District"), which the City Council enacted by ordinance adopted December 21, 2004 (the "TIF Ordinance"), enabling the future issuance of tax increment finance borrowings. Creation of the TIF District was a recognition that public support would be necessary to make the project economically feasible, since the overall cost of the redevelopment would be greater than that generally applicable to "green-field" developments, due to:

- the time and cost involved in putting the assemblage together (37 separate negotiations and acquisitions);
- the need to relocate businesses operating within the Improvement District to other sites (NOTE: no relocations of residents will be occurring within the Improvement District);
- the cost of remediation of past pollution to make the land suitable for re-use in urban, residential and commercial contexts, and,
- the cost of replacing or upgrading public infrastructure in the Improvement District, including more than 60 acres of public improvements, with miles of new streets and water and sewer lines, and a number of newly created parks and waterfront areas accessible to the public.

The Redevelopment Plan is attached to the TIF Ordinance creating the TIF District and describes the expectation that certain public improvements will be funded by revenues generated by the TIF District or will be financed by borrowings secured by a pledge of revenues generated by the TIF District.

The entirety of the Property is situated within the TIF District. The City Council amended the TIF Ordinance by an ordinance approved on July 8, 2014 to among other things extend the term of the TIF District until 2040.

The TIF Ordinance and the MID Ordinance, as currently amended and to be amended in the future, describe certain public infrastructure improvements to be undertaken within the Improvement District and therefore within the TIF District.

## THE 2015 IMPROVEMENT PLAN

Description of Proposed Improvements: Estimated Private Sector Investment

The following improvements, all of which will be owned by the City or other public entity, are proposed to be accomplished within or near the Improvement District.

- 1 Construction of bridge, boulevards, traffic circle, surrounding streets and internal streets located within and near the Improvement District.
- 2 Construction of parks and other public spaces within the Improvement District;
- 3 Construction and relocation of utilities, including storm water and sewer management, including a force main;
- 4 Acquisition of land for civic and public uses;
- 5 Construction of a public garage facility also referred to as a public works facility to replace that currently in use;
- 6 Demolition related to construction of roads, parks and buildings;
- 7 Other public improvements including but not limited to environmental clean-up (including testing and treatment), parking decks, relocation of communication towers, community centers and a boat basin.

Such publicly owned improvements are expected to be provided within a 25 year period. Such publicly owned improvements are expected to result in private sector investment, potentially including up to 4,100 new residential units to be created over a period of between 10 and 25 years. In addition, private sector investment may include multiple hotels and up to 1.5 million square feet of commercial and office space. In addition, approximately 22 acres of publicly owned open space is contemplated.

The total estimated cost of additional improvements to be built (excluding certain improvements already provided) is \$102,912,300 in current dollars

Bond Issuances; Public Infrastructure Agreement; Timing and Amounts

The improvements specified above are all expected to be funded with tax increment revenues, either directly or through bond issuances supported by tax increment revenues. Proceeds from the expected bond issuances may only be used to pay for items that will be owned by the public (see "Description of Proposed Improvements" above). Prior to the issuance of any bonds, a formal Public Infrastructure Agreement to be ratified by City Council, will be entered into by the City and Ashley River Investors, LLC or its designee (Ashley River Investors), setting forth a list of funding priorities and other administrative details.

Tax increment financings are expected provide the majority of the funding needed for the improvements. Tax increment revenues generated by the TIF District are intended to be the primary source for the payment of debt service on the tax increment financings. Multiple series of tax increment financings are expected, including multiple bond issuances from 2015 through 2019 for improvements that are estimated to cost approximately \$39.6 million in current dollars.

Under certain circumstances as set forth in the Public Infrastructure Agreement, a portion of the improvements are expected be funded by tax increment finance bonds that are secondarily secured by special assessments authorized under the Act. The estimated sources and uses for the expected future financings secured in part by special assessments are shown in the table below.

**Table 1 – Estimated Sources and Uses**

<b>Sources of funds:</b>	
Total bond proceeds	\$63,560,000
Interest earned on bond proceeds	\$114,853
<b>Total sources of funds</b>	<b>\$63,674,853</b>
<b>Uses of funds:</b>	
Public improvements	\$42,489,828
Issuance costs	\$900,000
Underwriter's discount	\$1,272,951
Capitalized interest	\$12,654,272
Reserve fund	\$6,356,000
Rounding	\$1,803
<b>Total uses of funds</b>	<b>\$63,674,853</b>

The amounts shown in the table above exclude the City's outstanding 2013 Charleston Neck Redevelopment Area tax increment financing.

To the extent that tax increment revenues and other available sources of funds are insufficient to fund the debt service on the bond issuances that are secured by special assessments, then annual special assessments may be billed to real property within the Improvement District on which special assessments have been levied, all in accordance with the governing documents of the special assessments.

While the financings will be effected under the authority of the City, the City will not be placed at risk for any debt service on the financings at any time, or for any reason.

**Identification of Tax Parcels in the Improvement District**

The Improvement District currently consists of thirty-five tax parcels as shown in Table 2 below. A map of the parcels listed in Table 2 is shown in Appendix A.

**Table 2 – Listing of Tax Parcels in the Improvement District**

464-00-00-012	Ashley I, LLC
464-00-00-013	Charleston County Parks and Recreation Commission
464-00-00-025	Ashley II of Charleston, LLC
464-00-00-026	Ashley II of Charleston, LLC
464-00-00-028	Ashley II of Charleston, LLC

464-00-00-029	Ashley I. LLC
464-00-00-030	North Charleston Sewer District
464-00-00-039	Ashley II of Charleston, LLC
464-00-00-040	Ashley II of Charleston, LLC
464-00-00-044	Monrovia Union Cemetery
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466-00-00-043	Parker Real Estate LP
466-00-00-044	Ashley II of Charleston, LLC
466-00-00-046	Ashley II of Charleston, LLC
466-00-00-049	Ashley I. LLC
466-00-00-051	Ashley II of Charleston, LLC
466-00-00-055	Robin W. Hood, II

#### Assessment Methodology Description

Assessments have been imposed by City Council upon parcels in the Improvement District based upon the expected development uses on the parcel and the estimated value of the expected development use, in order to fairly reflect the advantage derived from the improvements by each of the individual parcels. The Improvement District initially consists of multiple parcels on which all development is expected to occur. As these parcels are combined and subdivided, the assessments will be reallocated to the new parcels on the basis of the development expected to occur on the parcels and the approved assessment methodology.



Unanimous Consent of owners of the Parcels to which the MID Assessments Apply

It is specifically recognized that the owners of the Parcels to which the Assessments apply have unanimously requested the amendments made by Ordinance of City Council adopted August 18, 2015, which amendments include those set forth herein. It is further specifically recognized that such request constitutes consent in writing of "all of the owners of property upon which the assessment is to be levied to the imposition of such assessment" and as such the provisions of Section 5-37-120 of the Act are deemed satisfied.



**EXHIBIT D**

**PROJECT CERTIFICATION DISBURSEMENT REQUEST**

Date: \_\_\_\_\_

City of Charleston

Project Name: \_\_\_\_\_

Permit #: \_\_\_\_\_

Disbursement Request #: \_\_\_\_\_

\_\_\_\_\_ is currently monitoring construction and has reviewed the enclosed pay request application # \_\_\_\_\_, dated \_\_\_\_\_. I, as a registered professional, state to the best of my information, knowledge, and belief that the disbursement request for the above referenced project has been completed in general accordance with the approved plans and specifications. This is based upon periodic observations of construction and an inspection for design compliance by me or a representative of my office who is under my supervision. We recommend a disbursement of \$\_\_\_\_\_ to \_\_\_\_\_.

We request that the City provide written approval for the above mention disbursement request as stated in the Public Infrastructure Improvement Purchase Agreement.

Registered Professional: \_\_\_\_\_  
Printed Name Signature

S.C. Registration #: \_\_\_\_\_

Company Name: \_\_\_\_\_

EXHIBIT E

MEMORANDUM OF UNDERSTANDING  
AND AGREEMENT BETWEEN  
THE CITY OF CHARLESTON, SOUTH CAROLINA  
AND  
ASHLEY RIVER INVESTORS, LLC

This Memorandum of Understanding and Agreement ("Agreement") is made and entered into at Charleston, South Carolina as of the \_\_\_\_ day of July, 2014 by and between the City of Charleston, South Carolina (the "City") and Ashley River Investors, LLC a South Carolina limited liability company ("ARI").

RECITALS

WHEREAS, the City established the Charleston Neck Redevelopment Project Area (the "TIF District") consisting of approximately 1,347 acres pursuant to an ordinance adopted on December 21, 2004 ("TIF Ordinance"); and

WHEREAS, the City established the Magnolia Improvement District (the "District") consisting of approximately 210 acres located within the TIF District pursuant to an ordinance adopted on July 17, 2007 (the "MID Ordinance"); and

WHEREAS, the TIF Ordinance and the MID Ordinance describe certain public infrastructure improvements (the "Improvements") to be undertaken within the District and therefore within the TIF District; and

WHEREAS, the TIF Ordinance and the MID Ordinance describe revenue bonds to be issued to defray the cost of a portion of such Improvements ("TIF Bonds" and "MID Bonds," respectively); and

WHEREAS, the TIF Bonds are expected to be secured by TIF Revenues, as defined herein, as well as at ARI's election, by assessments in the District (the "MID Assessments") established by an ordinance ("Assessment Ordinance") adopted October 9, 2007; and

WHEREAS, Ashley I, LLC and Ashley II of Charleston, LLC (collectively, the "2007 Developers") previously proposed a mixed-use redevelopment project ("Magnolia Redevelopment Project") within the District and therefore within the TIF District, such property more specifically described in the MID Ordinance ("Magnolia Property"); and

WHEREAS, the MID Assessments were imposed and the MID Bonds anticipated to be issued at the request of the 2007 Developers; and

WHEREAS, in addition to securing MID Bonds, the MID Assessments were imposed to additionally secure the TIF Bonds; and

WHEREAS, in an attempt to insure their timely construction to coincide with the anticipated commencement of the private sector investment in and construction of the Magnolia Redevelopment Project, the acquisition and construction of certain of the Improvements was governed by the Development and Public Infrastructure Improvements Purchase Agreement dated as of December 1, 2007, between the City and the 2007 Developers (the "2007 Purchase Agreement"); and

WHEREAS, in 2011 after completion of only a portion of the Improvements, the 2007 Developers advised the City that due in part to the then current downturn in the economy, they were unable to continue to carry out their duties to the City which commenced in 2007; and

WHEREAS, by agreement dated April 20, 2011, the City and the 2007 Developers terminated all rights of the 2007 Developers in the 2007 Purchase Agreement and certain other agreements as described therein; and

WHEREAS, in connection with their duties to the City and their anticipated private sector investment, the 2007 Developers had entered into a promissory note secured by a mortgage (the "Promissory Note") on all but two parcels of the Magnolia Property; and

WHEREAS, the 2007 Developers defaulted on the Promissory Note, after which Magnolia/ARC Lender, LLC (the "Magnolia/ARC") purchased the same; and

WHEREAS, the Promissory Note remains in default as a result of which Magnolia/ARC intends to foreclose upon or otherwise acquire title to all or a substantial portion of the Magnolia Property owned by the 2007 Developers, and

WHEREAS, ARI has an option to acquire all or portions of the Magnolia Property from Magnolia/ARC; and

WHEREAS, upon such acquisition, ARI intends to undertake this private sector development and construction of the Magnolia Redevelopment Project (as modified); and

WHEREAS, continued redevelopment of the Magnolia Property by both the public and the private sector is beneficial to the adjoining and nearby communities and to the future growth of the City as first described in the TIF Ordinance; and

WHEREAS, prior to ARI exercising such option and thereafter undertaking development and construction of the Magnolia Redevelopment Project, the City and ARI have determined to address certain of the Improvements contained in the 2007 Purchase Agreement in an attempt to once again insure their timely construction to coincide with the anticipated commencement of the private sector investment in and development by ARI in the Magnolia Redevelopment Project; and

WHEREAS, certain of the remaining Improvements to be undertaken in and outside of the District include a system of roads, parks, streets, sidewalks, drainage improvements, environmental remediation, utilities, a public works facility to replace the existing facility at

Milford Street (the "Replacement Public Works Facility") and other public infrastructure necessary for the Magnolia Redevelopment Project and beneficial to the TIF District; and

WHEREAS, in conjunction with the ongoing implementation of the Magnolia Redevelopment Project, the City (either on its own behalf or through the Developer) will undertake those Improvements set forth on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the 2007 Purchase Agreement provided the Replacement Public Works Facility would be constructed with MID Only Bonds; and

WHEREAS, ARI has requested that in lieu of MID Only Bonds, the Replacement Public Works Facility be funded with the proceeds of TIF Bonds expected to be secured by TIF Revenues; and

WHEREAS, the City may contract with ARI in connection with the remediation, engineering, design, permitting, construction and equipping of such Improvements to be funded in part from the proceeds available from TIF Bonds ("TIF Bond Proceeds") as well as tax increment revenues generated by the TIF District ("TIF Revenues"); and

WHEREAS, such contract shall provide for reimbursement of funds advanced by ARI for the Improvements; and

WHEREAS, ARI has requested that in the event it acquires all or portions of the Magnolia Property, the MID Ordinance and the Assessment Ordinance be amended; and

WHEREAS, in order for the City and ARI to develop successfully their respective portions of the Magnolia Redevelopment Project, including the Improvements, it is necessary that the certain agreements and undertakings in the MID Ordinance and the Assessment Ordinance and related ordinances heretofore passed by the City Council be amended in accordance with this Agreement; and

WHEREAS, previously \$140 million in TIF Bond Proceeds, secured by TIF Revenues and MID Assessments were anticipated to be used for public infrastructure improvements within the District to serve as a catalyst to the anticipated private sector investment as set forth in the 2007 Purchase Agreement; and

WHEREAS, the completion of the Magnolia Redevelopment Project is dependent upon funding of Improvements from the TIF Bond Proceeds and TIF Revenues; and

WHEREAS, a similar agreement is now proposed with the understanding that the allocation of such TIF Bond Proceeds and TIF Revenues will be reduced to reflect the lower total costs set forth in Article II below and the provision for MID Only Bonds will be eliminated.

NOW THEREFORE, pursuant to the above recitations, and in consideration of the mutual covenants and promises of the parties contained herein, the parties agree as follows:

## ARTICLE I: RECITALS

The foregoing Recitals are incorporated into and made a part of this Agreement.

## ARTICLE II: TIF BONDS; TIF REVENUES

1. It is recognized that the principal amount of future issues of TIF Bonds is dependent upon such factors as the income stream securing such borrowings as well as interest rates then prevailing. To the extent that TIF Bond Proceeds together with TIF Revenues permit, such sums shall be expended in the following order of priority:
  - (i) the City's existing TIF Bond, in the outstanding principal amount of \$12,100,000 ("Outstanding TIF Bond") shall be paid as required by its terms. While the Outstanding TIF Bond is not subject to prepayment, the City agrees to explore prepayment with the holder thereof and, if feasible and financially neutral to the City, the first issuance of TIF Bonds shall in addition to funding certain of the Improvements may also be used to pay off the Outstanding TIF Bond;
  - (ii) the next TIF Revenues and TIF Bond Proceeds, not to exceed \$39 million (net of bond issuance costs, capitalized interest and reserves and the Outstanding TIF Bond), will be allocated to Improvements within the District;
  - (iii) the next TIF Revenues and TIF Bond Proceeds, not to exceed \$18 million (net of bond issuance costs, capitalized interest and reserves), will be allocated to construction of the Replacement Public Works Facility, construction of which, subject to the provision of Article II, paragraph 4, will commence no later than December 31, 2018; and
  - (iv) the next TIF Revenues and TIF Bond Proceeds, not to exceed \$41 million (net of bond issuance costs, capitalized interest and reserves), will be available to fund additional public capital improvements within the District.
2. With respect to costs incurred in the future by ARI, its affiliates and assigns (hereinafter "ARI Parties"), for Improvements within the District, and so long as consistent with the allocations established in the preceding section, and so long as the Improvements funded by such costs, including the budgets, have been approved by the City, ARI Parties shall have the right to obtain reimbursement (or the City may elect to pay these costs directly) from TIF Revenues if excess funds from TIF Revenues exist beyond that necessary to support required annual payments for outstanding TIF Bonds and required debt coverage ratio if any, beyond debt service reserve (hereinafter "Excess TIF Revenue"). Such reimbursement rights shall be reflected in a future Reimbursement Ordinance.

3. By ordinance adopted July 15, 2014, the maximum term of obligations to be issued under the Redevelopment Plan set forth in the Ordinance was amended to extend the term from December 21, 2029 to December 21, 2039.
4. Assuming a successful financing of such a borrowing and subject to the priority established in Article II, paragraph 1(iii), ARI shall construct the Replacement Public Works Facility using TIF Bond proceeds and/or TIF Revenues. ARI's obligation to commence construction of such facility no later than December 31, 2018 is dependent upon such successful financing.

#### ARTICLE III: MID ONLY BONDS/MID ASSESSMENTS

1. The City acknowledges that MID only Bonds are no longer anticipated to be necessary, and therefore ARI has requested that the right to issue MID only Bonds with respect to the Improvement District as contemplated by the Assessment Ordinance be terminated. The City agrees with this request. Correspondingly, Assessment A in the Assessment Ordinance which serves as a repayment mechanism for the MID only Bonds is also terminated. These changes shall be reflected and will be effective upon adoption of an amended MID Ordinance and Assessment Ordinance.
2. ARI has recommended that at present the MID Assessments contemplated by Assessment B as set forth in the Assessment Ordinance continue to be available at ARI's option as additional collateral for one or more of the TIF Bond issuances. This MID Assessment shall be used as a potential repayment mechanism for and as additional collateral for individual TIF Bond issuances only upon ARI's request. The calculation of the portion of Assessment B allocable to each individual parcel shall be modified in such manner as those parcel owners then responsible for payment of such MID Assessments shall request in writing and will be effective upon adoption of an amended MID Ordinance and Assessment Ordinance.
3. Any amounts actually paid by ARI Parties pursuant to the MID Assessment in order to fund debt service on the TIF Bonds shall be reimbursed from first available TIF Bond Proceeds and/or Excess TIF Revenue.

#### ARTICLE IV: REPLACEMENT PUBLIC WORKS FACILITY

1. The Parties shall work together in good faith in anticipation of ARI commencing construction of the Replacement Public Works Facility in accordance with the plans attached as Exhibit B and such changes or modifications as shall be agreed to by the Parties by no later than December 31, 2018, which date is dependent upon a successful financing as described above and below.
2. The costs of the Replacement Public Works Facility shall be funded by TIF Bond Proceeds in the priority and amount established in paragraph 1(iii) of Article II. As set



forth in Article III, paragraph 1 above, such TIF Bonds shall be secured by TIF Revenues only and not by MID Only Bonds or MID Assessments, provided, as set forth in Article III, paragraph 2, the MID Assessment may be used as a potential repayment mechanism for and as additional collateral for TIF Bonds issued for the Replacement Public Works Facility. Any additional cost for the Replacement Public Works Facility after expenditure of funds necessary to construct the facility in accordance with the plans set forth on Exhibit B (but such costs not to exceed \$18 million as described in paragraph 1(iii) of Article II) shall be borne by the City separate and apart from TIF Bond proceeds. ARI may at its election construct the Replacement Public Works Facility in advance of TIF Bond Proceeds being available. If such funds are advanced by ARI to construct the Replacement Public Works Facility, then such funds shall be reimbursed to the ARI in the priority as established in Article II, Paragraph 1 (iii). In addition, ARI may terminate the current lease dated December 19, 2008 between the City of Charleston and Ashley II of Charleston, LLC by providing written notice thereof upon issuance of a certificate of occupancy for the Replacement Public Works Facility, such termination to be effective 45 days after such written notice.

3. The City and ARI shall work together to "value engineer" the construction of the Replacement Public Works Facility in order to minimize costs.
4. The "not to exceed" cost of \$18 million for the Replacement Public Works Facility (as set forth in Article II, paragraph 1(iii)) shall increase at an annualized rate of 3% beginning on January 1, 2015 and continuing until completion of the Public Works Facility. Similarly, the reimbursable costs of the Improvements contemplated in Article II, paragraphs 1(ii) and 1(iv), shall increase at an annualized rate of 3% annually beginning January 1, 2015 and continuing until completion of such Improvements, and the "not to exceed" reimbursable costs of \$39 million and \$41 million as set forth in Article II, paragraph 1 (ii) and 1(iv) shall increase by the same annualized 3% amount beginning January 1, 2015.

#### ARTICLE V: OTHER MATERIAL PROVISIONS

1. Any dispute which arises under or with respect to this Agreement will be in the first instance be subject to informal negotiations between the undersigned parties. The period of informal negotiations will not exceed twenty (20) calendar days from the time the dispute arises unless that period is extended by a written agreement of the parties to the dispute. The dispute will be considered to have arisen when one party sends to the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations, non-binding mediation may be invoked by either party by written notice to the other. If non-binding mediation is invoked, each party shall separately set out the nature of the dispute with a proposal for resolution in a letter submitted to a mutually agreed upon third party mediator.
2. All notices or other communications required or permitted under this Agreement shall be in writing directed to a party at its address set forth below. A party may

designate a new address by written notice to the other party. All notices shall be effective and be deemed delivered upon receipt as evidenced by a signed certified mail receipt, signed overnight delivery receipt or signed acceptance of hand delivery receipt.

City: Chief Financial Officer  
City of Charleston  
116 Meeting Street  
Charleston, SC 29401

ARI: Ashley River Investors, LLC  
201 Sigma Drive, Suite #400  
Summerville, SC 29483  
Attn: Kenneth T. Seeger  
Telephone No: (843) 851-4603

3. This Agreement (including any attachments and any documents incorporated herein by reference) constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection herewith. No interpretation, modification, termination or waiver of any provision of or default pursuant to this Agreement shall be binding upon a party unless in writing and signed by the party against whom enforcement is sought. All parties have participated in the preparation of this Agreement and have received advice of legal counsel, consequently this Agreement shall not be construed against either party based on the identity of the drafter of this Agreement.
4. Except as specifically provided herein to the contrary ARI and the City agree that this Agreement is for their mutual benefit and is not intended and does not create any separate or independent rights or benefits for third parties.
5. Except as specifically provided herein to the contrary, nothing herein shall waive the powers which The City has under existing law or the rights of ARI to contest such powers.
6. This Agreement and the legal relationship between the parties shall be governed by and construed in accordance with the laws of the State of South Carolina.
7. This Agreement may be amended only by the written agreement of the parties hereto executed by all parties to this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF the parties have caused their authorized representatives to execute this Agreement and set their hands and seals as of the date first written above.

**CITY OF CHARLESTON**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ASHLEY RIVER INVESTORS, LLC,  
A South Carolina limited liability company**

By: \_\_\_\_\_

Kenneth T. Seeger

Its: Authorized Representative

Date: July \_\_, 2014

AIA Document A312™ - 2010

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§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

**§ 5.1 Claimants, who do not have a direct contract with the Contractor,**

- § 9** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum

1. the name of the Claimant;
2. the name of the person for whom the labor was done, or materials or equipment furnished;
3. a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
4. a brief description of the labor, materials or equipment furnished;
5. the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
7. the total amount of previous payments received by the Claimant; and
8. the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

EXHIBIT C

FORM OF AFFIDAVIT REGARDING TITLE OF ACCESS

STATE OF SOUTH CAROLINA	)	
	)	DEVELOPER'S AFFIDAVIT
COUNTY OF CHARLESTON	)	

Property:

THE UNDERSIGNED owner, by its authorized agent, after first being duly sworn, says under oath the following, to the best of its actual knowledge:

1. That the undersigned currently has title to or a valid easement over or other valid right to perform work on that certain real property as more particularly described in the attached Exhibit A subject to all matters of record.

OWNER:

\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

SWORN to and subscribed before  
me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_





e.)

**REAL ESTATE COMMITTEE**  
**GENERAL FORM**

**TO:** Real Estate Committee **DATE:** August 15, 2017  
**FROM:** Colleen Carducci **DEPT:** BFRC  
**ADDRESS:** 180 Lockwood Boulevard  
**TMS:** 460-00-00-013  
**PROPERTY OWNER:** City of Charleston

**ACTION REQUEST:** Request approval for the Mayor to execute the Permanent Easement Agreement with SCE&G to facilitate the underground electrical line on the City's property at 180 Lockwood along both Fishburne Street and Lockwood Boulevard.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☒

**COORDINATION:** The request has been coordinated with:  
*All supporting documentation must be included*

	<b><u>Signature</u></b>	<b><u>Attachments</u></b>
Department Head		<input type="checkbox"/>
Legal Department	<u>Frances P. Cantwell</u>	<input type="checkbox"/>
Chief Financial Officer	<u>Amy Wharton</u>	<input type="checkbox"/>
Director Real Estate Management	<u>Colleen Carducci</u>	<input checked="" type="checkbox"/>
		<input type="checkbox"/>

**FUNDING:** Was funding needed? Yes ☐ No ☒

If yes, was funding previously approved? Yes ☐ No ☐

\*If approved, provide the following: Dept/Div. \_\_\_\_\_ Acct: \_\_\_\_\_

Balance in Account \_\_\_\_\_ Amount needed for this item \_\_\_\_\_

**NEED:** Identify any critical time constraint(s).

\*Commercial Property and Community & Housing Development have an additional form.

## COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: August 15, 2017  
FROM: Colleen Carducci DEPT: BFRC  
ADDRESS: 180 Lockwood Boulevard  
TMS: 480-00-00-013  
PROPERTY OWNER: City of Charleston

ACTION REQUEST: Request approval for the Mayor to execute the Permanent Easement Agreement with SCE&G to facilitate the underground electrical line on the City's property at 180 Lockwood along both Fishburne Street and Lockwood Boulevard.

**ORDINANCE:** Is an ordinance required? Yes ☐ No ☒

**ACTION:** What action is being taken on the Property mentioned?

☐ **ACQUISITION**      Seller (Property Owner) \_\_\_\_\_ Purchaser \_\_\_\_\_  
☐ **DONATION/TRANSFER**  
Donated By: \_\_\_\_\_  
☐ **FORECLOSURE**  
Terms: \_\_\_\_\_  
☐ **PURCHASE**  
Terms: \_\_\_\_\_  
☐ **CONDEMNATION**  
Terms: \_\_\_\_\_  
☐ **OTHER**  
Terms: \_\_\_\_\_

☒ **EASEMENT**      Grantor (Property Owner) City of Charleston      Grantee SCE&G  
☒ **PERMANENT**  
Terms: The underground electrical line will be on the City's property at 180 Lockwood along both Fishburne Street and Lockwood Boulevard. The easement is 5 feet on either side of the conduit.  
☐ **TEMPORARY**  
Terms: \_\_\_\_\_

## COMMERCIAL REAL ESTATE FORM



### LEASE

Lessor: \_\_\_\_\_ Lessee: \_\_\_\_\_



#### INITIAL

Terms: \_\_\_\_\_



#### RENEWAL

Terms: \_\_\_\_\_



#### AMENDMENT

Terms: \_\_\_\_\_



### Improvement of Property

Owner: \_\_\_\_\_

Terms: \_\_\_\_\_

**BACKGROUND CHECK:** If Property Action Request is for the sale or lease of city property, has a background check been completed?

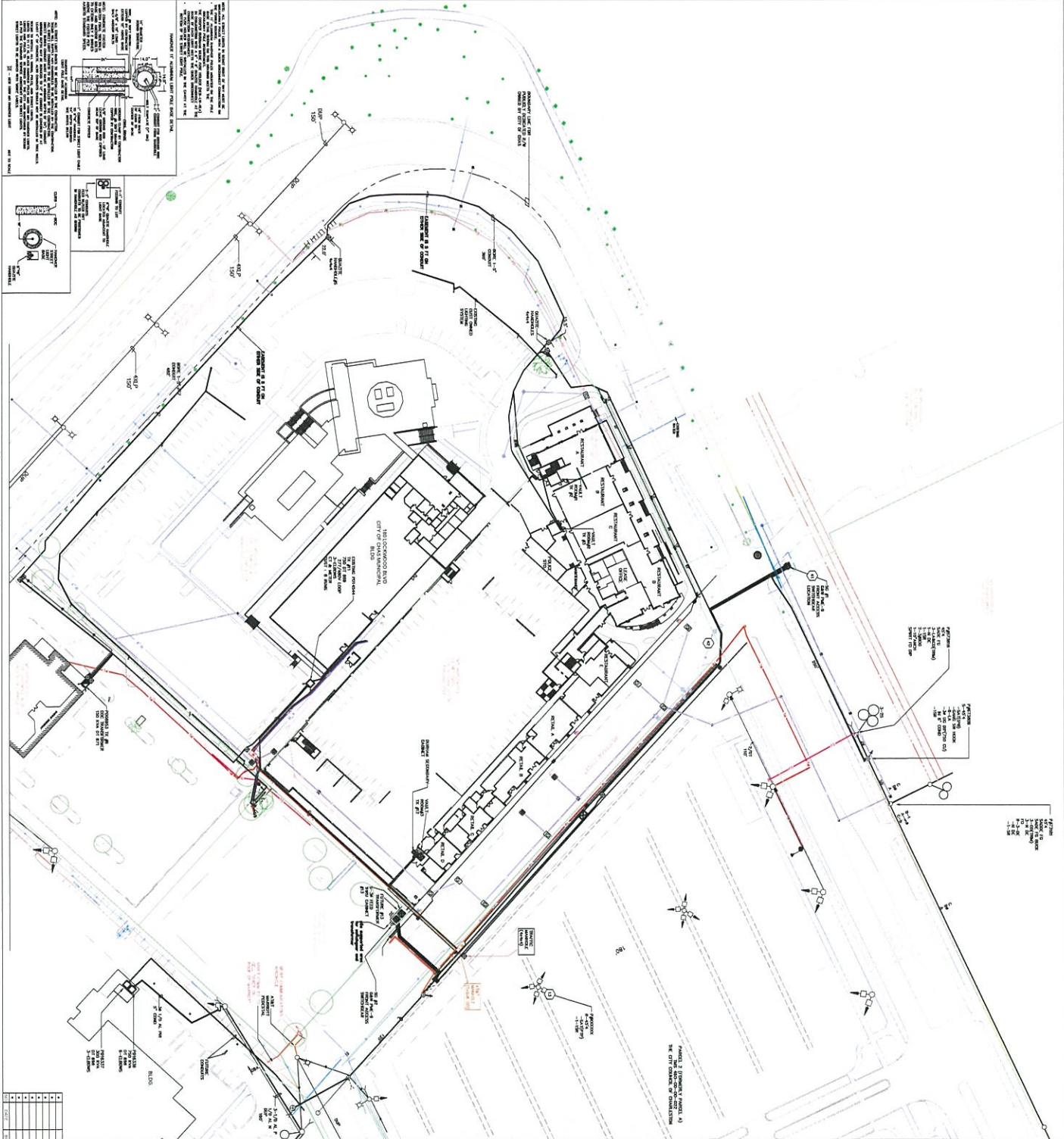
Yes ☐ No ☐ N/A ☒

Results: \_\_\_\_\_

Signature: *Colleen Carducci*  
Director Real Estate Management

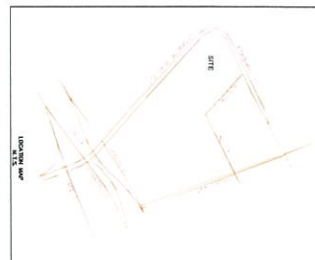
**ADDITIONAL:** Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

**NEED:** Identify any critical time constraint(s).



PLAN "SAFETY" INTO EVERY JOB

SCANACAD DRAWING-DO NOT REVISE MANUALLY

[illegible]

FORM NO. 10-70113, 10-70113-002 1. NAME OF THE VENDOR 2. ADDRESS 3. CITY 4. STATE 5. ZIP CODE 6. PHONE NO. 7. FAX NO. 8. E-MAIL ADDRESS 9. NAME OF THE BUYER 10. ADDRESS 11. CITY 12. STATE 13. ZIP CODE 14. PHONE NO. 15. FAX NO. 16. E-MAIL ADDRESS 17. NAME OF THE PROJECT 18. ADDRESS 19. CITY 20. STATE 21. ZIP CODE 22. PHONE NO. 23. FAX NO. 24. E-MAIL ADDRESS		25. NAME OF THE PROJECT 26. ADDRESS 27. CITY 28. STATE 29. ZIP CODE 30. PHONE NO. 31. FAX NO. 32. E-MAIL ADDRESS	
33. NAME OF THE PROJECT 34. ADDRESS 35. CITY 36. STATE 37. ZIP CODE 38. PHONE NO. 39. FAX NO. 40. E-MAIL ADDRESS		41. NAME OF THE PROJECT 42. ADDRESS 43. CITY 44. STATE 45. ZIP CODE 46. PHONE NO. 47. FAX NO. 48. E-MAIL ADDRESS	

49. NAME OF THE PROJECT 50. ADDRESS 51. CITY 52. STATE 53. ZIP CODE 54. PHONE NO. 55. FAX NO. 56. E-MAIL ADDRESS		57. NAME OF THE PROJECT 58. ADDRESS 59. CITY 60. STATE 61. ZIP CODE 62. PHONE NO. 63. FAX NO. 64. E-MAIL ADDRESS	
65. NAME OF THE PROJECT 66. ADDRESS 67. CITY 68. STATE 69. ZIP CODE 70. PHONE NO. 71. FAX NO. 72. E-MAIL ADDRESS		73. NAME OF THE PROJECT 74. ADDRESS 75. CITY 76. STATE 77. ZIP CODE 78. PHONE NO. 79. FAX NO. 80. E-MAIL ADDRESS	

81. NAME OF THE PROJECT 82. ADDRESS 83. CITY 84. STATE 85. ZIP CODE 86. PHONE NO. 87. FAX NO. 88. E-MAIL ADDRESS		89. NAME OF THE PROJECT 90. ADDRESS 91. CITY 92. STATE 93. ZIP CODE 94. PHONE NO. 95. FAX NO. 96. E-MAIL ADDRESS	
97. NAME OF THE PROJECT 98. ADDRESS 99. CITY 100. STATE 101. ZIP CODE 102. PHONE NO. 103. FAX NO. 104. E-MAIL ADDRESS		105. NAME OF THE PROJECT 106. ADDRESS 107. CITY 108. STATE 109. ZIP CODE 110. PHONE NO. 111. FAX NO. 112. E-MAIL ADDRESS	

113. NAME OF THE PROJECT 114. ADDRESS 115. CITY 116. STATE 117. ZIP CODE 118. PHONE NO. 119. FAX NO. 120. E-MAIL ADDRESS		121. NAME OF THE PROJECT 122. ADDRESS 123. CITY 124. STATE 125. ZIP CODE 126. PHONE NO. 127. FAX NO. 128. E-MAIL ADDRESS	
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145. NAME OF THE PROJECT 146. ADDRESS 147. CITY 148. STATE 149. ZIP CODE 150. PHONE NO. 151. FAX NO. 152. E-MAIL ADDRESS		153. NAME OF THE PROJECT 154. ADDRESS 155. CITY 156. STATE 157. ZIP CODE 158. PHONE NO. 159. FAX NO. 160. E-MAIL ADDRESS	
161. NAME OF THE PROJECT 162. ADDRESS 163. CITY 164. STATE 165. ZIP CODE 166. PHONE NO. 167. FAX NO. 168. E-MAIL ADDRESS		169. NAME OF THE PROJECT 170. ADDRESS 171. CITY 172. STATE 173. ZIP CODE 174. PHONE NO. 175. FAX NO. 176. E-MAIL ADDRESS	

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225. NAME OF THE PROJECT 226. ADDRESS 227. CITY 228. STATE 229. ZIP CODE 230. PHONE NO. 231. FAX NO. 232. E-MAIL ADDRESS		233. NAME OF THE PROJECT 234. ADDRESS 235. CITY 236. STATE 237. ZIP CODE 238. PHONE NO. 239. FAX NO. 240. E-MAIL ADDRESS	

241. NAME OF THE PROJECT 242. ADDRESS 243. CITY 244. STATE 245. ZIP CODE 246. PHONE NO. 247. FAX NO. 248. E-MAIL ADDRESS		249. NAME OF THE PROJECT 250. ADDRESS 251. CITY 252. STATE 253. ZIP CODE 254. PHONE NO. 255. FAX NO. 256. E-MAIL ADDRESS	
257. NAME OF THE PROJECT 258. ADDRESS 259. CITY 260. STATE 261. ZIP CODE 262. PHONE NO. 263. FAX NO. 264. E-MAIL ADDRESS		265. NAME OF THE PROJECT 266. ADDRESS 267. CITY 268. STATE 269. ZIP CODE 270. PHONE NO. 271. FAX NO. 272. E-MAIL ADDRESS	

273. NAME OF THE PROJECT 274. ADDRESS 275. CITY 276. STATE 277. ZIP CODE 278. PHONE NO. 279. FAX NO. 280. E-MAIL ADDRESS		281. NAME OF THE PROJECT 282. ADDRESS 283. CITY 284. STATE 285. ZIP CODE 286. PHONE NO. 287. FAX NO. 288. E-MAIL ADDRESS	
289. NAME OF THE PROJECT 290. ADDRESS 291. CITY 292. STATE 293. ZIP CODE 294. PHONE NO. 295. FAX NO. 296. E-MAIL ADDRESS		297. NAME OF THE PROJECT 298. ADDRESS 299. CITY 300. STATE 301. ZIP CODE 302. PHONE NO. 303. FAX NO. 304. E-MAIL ADDRESS	

305. NAME OF THE PROJECT 306. ADDRESS 307. CITY 308. STATE 309. ZIP CODE 310. PHONE NO. 311. FAX NO. 312. E-MAIL ADDRESS		313	
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SOUTH CAROLINA ELECTRIC & GAS CO.		TITLE 36 WEST FLOOR SOUTH BENT		DATE 06/01/92	
DETAIL CONCRETE REINFORCING		NO. (RE) 31.5 IN. (250) 13 IN.		SCALE 1"=4'-0"	
PROJECT 062253-02-0000		D-82253		SHEET 2 OF 9 SHEETS	
REV. 1/2/92		REVISED 2/2/92		REVISED 2/2/92	

f(i)



Ratification  
Number \_\_\_\_\_

## AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 2210 WEEPOOLLOW TRAIL (0.33 ACRE) (TMS# 353-12-00-005), WEST ASHLEY, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 2. THE PROPERTY IS OWNED BY STEPHEN & SHERI WENGER.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 2 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 2210 Weepoolow Trail, (0.33 acre) is identified by the Charleston County Assessors Office as TMS# 353-12-00-005, (see attached map) shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of \_\_\_\_\_  
in the Year of Our Lord,  
2017, in the \_\_\_\_\_ Year of the Independence of the  
United States of America.

By:

\_\_\_\_\_  
John J. Tecklenburg  
Mayor

Attest:

\_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

# Annexation Profile

**Parcel Address:** 2210 Weepoolow Trail

**Presented to Council:** 8/15/2017

**Status:** Received Signed Petition

**Owner Names:** Stephen & Sheri Wenger

**Year Built:** 1992

**Parcel ID:** 3531200005

**Number of Units:** 1

**Number of Persons:** 2

**Race:** Caucasian

**Acreage:** 0.33

**Mailing Address:** 2210 Weepoolow Trl

**Current Land Use:** Residential

**Address:** Charleston, SC 29407

**Current Zoning:** R-4

**Requested Zoning:** SR-1

**Recommended Zoning:** SR-1

**City Area:** West Ashley

**Subdivision:**

**Appraised Value:** \$510,000.00

**Council District:** 2

**Assessed Value:** \$20,400.00

**Within UGB:** Yes

**Stormwater Fees:** 72.00

<b>Police</b>	Located in existing service area - Team 4
<b>Fire</b>	Located in existing service area - Station 16
<b>Public Service</b>	
<b>Sanitation</b>	Located in existing service area. One additional stop.
<b>Storm Water</b>	Contiguous to existing service area.
<b>Streets and Sidewalks</b>	No additional City-maintained right-of-way
<b>Traffic and Transportation</b>	
<b>Signalization</b>	None
<b>Signage</b>	None
<b>Pavement Markings</b>	None
<b>Charleston Water Systems</b>	CWS service area.
<b>Planning</b>	
<b>Urban Growth Line</b>	Property is a developed site within the line.
<b>City Plan (Century Five)</b>	Development and zoning are consistent with the City Plan.
<b>Parks</b>	Already being served.

**Notes/Comments:**

**City Plan  
Recommendation:**

The existing development and proposed zoning is consistent with the City Plan.  
Recommend annexation.

STATE OF SOUTH CAROLINA )  
 ) PETITION FOR ANNEXATION  
COUNTY OF CHARLESTON )

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area or property which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

SAID PROPERTY, located in West Ashley (approximately 1/3 acres) to be annexed is identified by the Charleston County Assessors Office as Property Identification Number: TMS# 353-12-00-005  
(Address: 2210 Weepoolow Trail ).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

Dated this 11 day of  
July, 2017

FREEHOLDERS (OWNERS) SIGNED

DATE OF SIGNATURE

Stephen Wenger  
(Signature)

7/11/17  
(Date)

Stephen J. Wenger  
(Print Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)



# City of Charleston Annexation Map

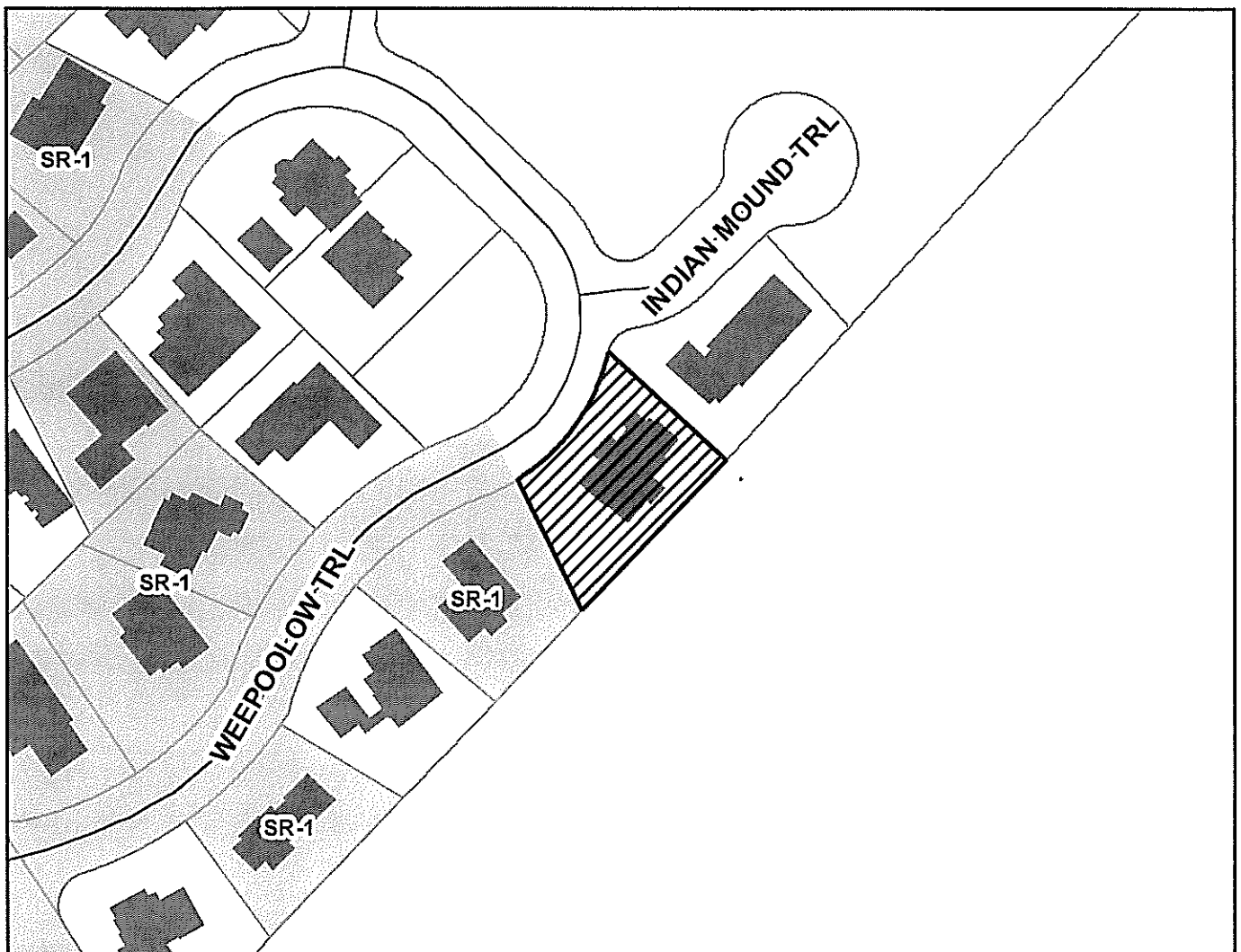
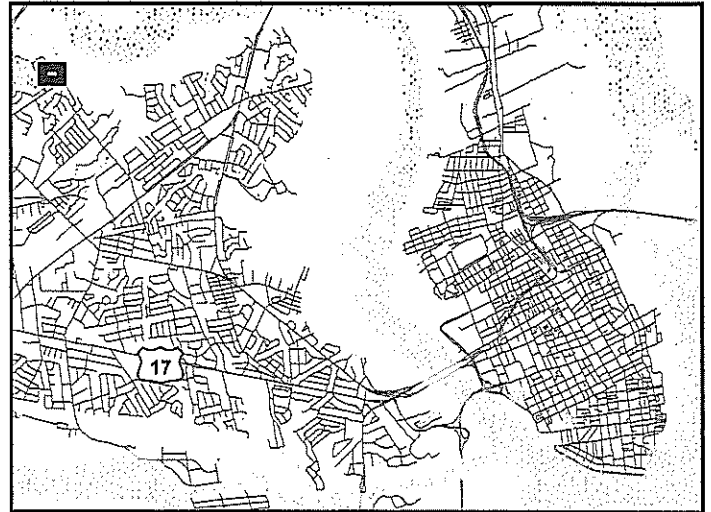
Parcel Address:  
2210 Weepoolow Trail

TMS #:  
3531200005

Acreage: 0.33

City Council District: 2

West Ashley



Subject Property



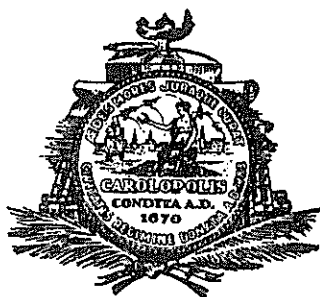
Corporate Limits  
City of Charleston



Water







Ratification  
Number \_\_\_\_\_

# A N O R D I N A N C E

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 2000 INDIAN MOUND TRAIL (0.34 ACRE) (TMS# 353-12-00-006), WEST ASHLEY, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 2. THE PROPERTY IS OWNED BY JUDY G. MARKOWITZ LIVING TRUST.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

- A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.
- B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.
- C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 2 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 2000 Indian Mound Trail, (0.34 acre) is identified by the Charleston County Assessors Office as TMS# 353-12-00-006, (see attached map) shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of \_\_\_\_\_ in the Year of Our Lord, 2017, in the \_\_\_\_\_ Year of the Independence of the United States of America.

By: \_\_\_\_\_  
John J. Tecklenburg  
Mayor

Attest: \_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

# Annexation Profile

**Parcel Address:** 2000 Indian Mound Trail

**Presented to Council:** 8/15/2017

**Status:** Received Signed Petition

**Owner Names:** Judy G. Markowitz Living Trust

**Year Built:** 1992

**Parcel ID:** 3531200006

**Number of Units:** 1

**Number of Persons:** 1

**Race:** Caucasian

**Acreage:** 0.34

**Mailing Address:** 2000 Indian Mound Trl

**Current Land Use:** Residential

**Address:** Charleston, SC 29407

**Current Zoning:** R-4

**Requested Zoning:** SR-1

**City Area:** West Ashley

**Recommended Zoning:** SR-1

**Subdivision:**

**Appraised Value:** \$675,000.00

**Council District:** 2

**Assessed Value:** \$27,000.00

**Within UGB:** Yes

**Stormwater Fees:** 72.00

<b>Police</b>	Located in existing service area - Team 4
<b>Fire</b>	Located in existing service area - Station 16
<b>Public Service</b>	
<b>Sanitation</b>	Located in existing service area. One additional stop.
<b>Storm Water</b>	Contiguous to existing service area.
<b>Streets and Sidewalks</b>	No additional City-maintained right-of-way
<b>Traffic and Transportation</b>	
<b>Signalization</b>	None
<b>Signage</b>	None
<b>Pavement Markings</b>	None
<b>Charleston Water Systems</b>	CWS service area.
<b>Planning</b>	
<b>Urban Growth Line</b>	Property is a developed site within the line.
<b>City Plan (Century Five)</b>	Development and zoning are consistent with the City Plan.
<b>Parks</b>	Already being served.

**Notes/Comments:**

**City Plan Recommendation:** The existing development and proposed zoning is consistent with the City Plan. Recommend annexation.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON ) PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area or property which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

SAID PROPERTY, located in West Ashley (approximately .34 acres) to be annexed is identified by the Charleston County Assessors Office as Property Identification Number: TMS# 353-12-00-006  
(Address: 2000 Indian 1700 and Tivoli, Charleston, SC 29407)

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

Dated this 12<sup>th</sup> day of July, 2017

FREEHOLDERS (OWNERS) SIGNED

DATE OF SIGNATURE

<u>Judy Kay Goldberg Trustee</u>	<u>7/12/2017</u>
(Signature) for Judy G. Markowitz	(Date)
<u>Judy Kay Goldberg</u>	<u>Living Trust</u>
(Print Name) Trustee	
<u>for Judy G. Markowitz Living Trust</u>	
(Signature)	(Date)

(Print Name)

# City of Charleston Annexation Map

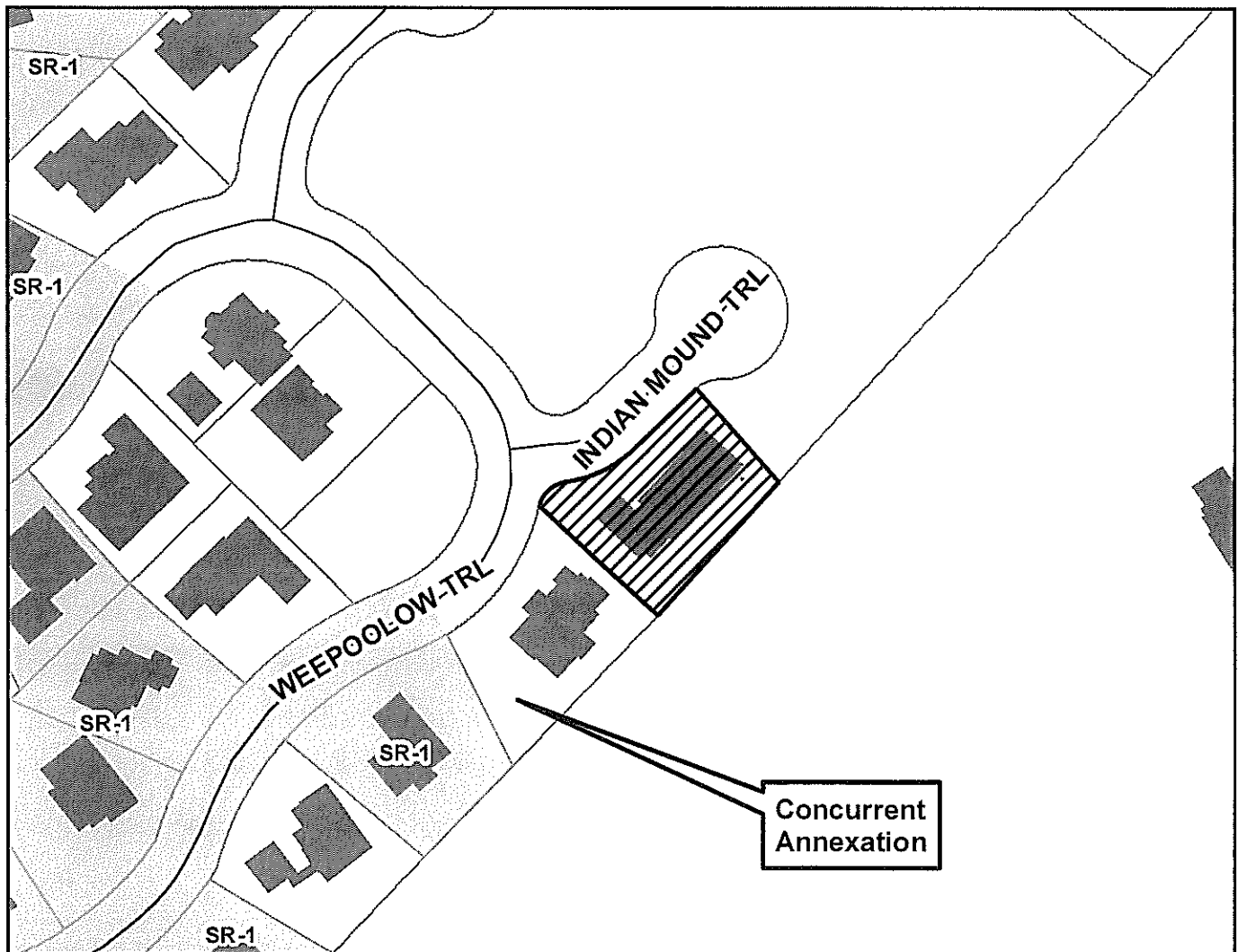
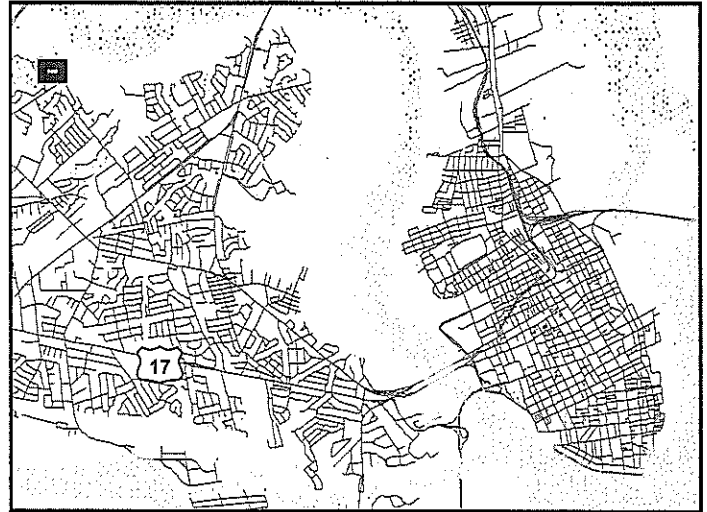
Parcel Address:  
2000 Indian Mound Trail

TMS #:  
3531200006

Acreage: 0.34

City Council District: 2

West Ashley



Subject Property



Corporate Limits  
City of Charleston



Water





Ratification  
Number \_\_\_\_\_

# A N O R D I N A N C E

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 1622 BOONE HALL DRIVE (0.34 ACRE) (TMS# 353-14-00-136), WEST ASHLEY, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 7. THE PROPERTY IS OWNED BY AMY BRUNSON.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 7 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 1622 Boone Hall Drive, (0.34 acre) is identified by the Charleston County Assessors Office as TMS# 353-14-00-136, (see attached map) and includes all marshes, public waterways and public rights-of-way, shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of \_\_\_\_\_ in the Year of Our Lord, 2017, in the \_\_\_\_\_ Year of the Independence of the United States of America.

By:

\_\_\_\_\_  
John J. Tecklenburg  
Mayor

Attest:

\_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

# Annexation Profile

**Parcel Address:** 1622 Boone Hall Drive

**Presented to Council:** 8/15/2017

**Status:** Received Signed Petition

**Owner Names:** Amy Brunson

**Year Built:** 1664

**Parcel ID:** 3531400136

**Number of Units:** 1

**Number of Persons:** 1

**Race:** Caucasian

**Acreage:** 0.34

**Mailing Address:** 1622 Boone Hall Dr

**Current Land Use:** Residential

**Address:** Charleston, SC 29407

**Current Zoning:** R-4

**Requested Zoning:** SR-1

**City Area:** West Ashley

**Recommended Zoning:** SR-1

**Subdivision:**

**Appraised Value:** \$140,800.00

**Council District:** 7

**Assessed Value:** \$5,630.00

**Within UGB:** Yes

**Stormwater Fees:** 72.00

<b>Police</b>	Located in existing service area - Team 4
<b>Fire</b>	Located in existing service area - Station 16
<b>Public Service</b>	
<b>Sanitation</b>	Located in existing service area. One additional stop.
<b>Storm Water</b>	Contiguous to existing service area.
<b>Streets and Sidewalks</b>	Additional State-maintained right-of-way
<b>Traffic and Transportation</b>	
<b>Signalization</b>	None
<b>Signage</b>	None
<b>Pavement Markings</b>	Good Condition
<b>Charleston Water Systems</b>	CWS service area.
<b>Planning</b>	
<b>Urban Growth Line</b>	Property is a developed site within the line.
<b>City Plan (Century Five)</b>	Development and zoning are consistent with the City Plan.
<b>Parks</b>	Already being served.

**Notes/Comments:**

**City Plan  
Recommendation:**

The existing development and proposed zoning is consistent with the City Plan.  
Recommend annexation.

STATE OF SOUTH CAROLINA )  
 ) PETITION FOR ANNEXATION  
COUNTY OF CHARLESTON )

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area or property which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

SAID PROPERTY, located in the West Ashley area (approximately 0.34 acre) to be annexed is identified by the Charleston County Assessors Office as Property Identification Number: TMS# 353-14-00-136 (1622 Boone Hall Drive).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

Dated this 27th day of  
July, 2017

FREEHOLDERS (OWNERS) SIGNED

DATE OF SIGNATURE

Amy M. Brunson  
(Signature)

July 27, 2017  
(Date)

Amy M. Brunson  
(Print Name)

N/A  
(Signature)

N/A  
(Date)

N/A  
(Print Name)

# City of Charleston Annexation Map

Parcel Address:  
1622 Boone Hall Dr

TMS #:  
3531400136

Acreage: 0.34

City Council District: 7

West Ashley



Subject Property



Corporate Limits  
City of Charleston



Water





f(iv)



Ratification  
Number \_\_\_\_\_

## A N O R D I N A N C E

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 1848 SANDCROFT DRIVE (0.28 ACRE) (TMS# 353-14-00-216), WEST ASHLEY, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 7. THE PROPERTY IS OWNED BY SC RENOVATION GROUP.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 7 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 1848 Sandcroft Drive, (0.28 acre) is identified by the Charleston County Assessors Office as TMS# 353-14-00-216, (see attached map) and includes all marshes, public waterways and public rights-of-way, shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of \_\_\_\_\_  
in the Year of Our Lord,  
2017, in the \_\_\_\_\_ Year of the Independence of the  
United States of America.

By:

\_\_\_\_\_  
John J. Tecklenburg  
Mayor

Attest:

\_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

# Annexation Profile

**Parcel Address:** 1848 Sandcroft Drive

**Presented to Council:** 8/15/2017

**Status:** Received Signed Petition

**Owner Names:** SC Renovation Group

**Year Built:** 1962

**Parcel ID:** 3531400216

**Number of Units:** 1

**Number of Persons:** 2

**Race:** Caucasian

**Acreage:** 0.28

**Mailing Address:** 1 11th Ave

**Current Land Use:** Residential

**Address:** Charleston, SC 29403

**Current Zoning:** R-4

**Requested Zoning:** SR-1

**City Area:** West Ashley

**Recommended Zoning:** SR-1

**Subdivision:**

**Appraised Value:** \$137,100.00

**Council District:** 7

**Assessed Value:** \$8,230.00

**Within UGB:** Yes

**Stormwater Fees:** 72.00

<b>Police</b>	Located in existing service area - Team 4
<b>Fire</b>	Located in existing service area - Station 16
<b>Public Service</b>	
<b>Sanitation</b>	Located in existing service area. One additional stop.
<b>Storm Water</b>	Contiguous to existing service area.
<b>Streets and Sidewalks</b>	Additional City-maintained right-of-way
<b>Traffic and Transportation</b>	
<b>Signalization</b>	None
<b>Signage</b>	Good Condition
<b>Pavement Markings</b>	None
<b>Charleston Water Systems</b>	CWS service area.
<b>Planning</b>	
<b>Urban Growth Line</b>	Property is a developed site within the line.
<b>City Plan (Century Five)</b>	Development and zoning are consistent with the City Plan.
<b>Parks</b>	Already being served.

**Notes/Comments:**

**City Plan  
Recommendation:**

The existing development and proposed zoning is consistent with the City Plan.  
Recommend annexation.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON ) PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area or property which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

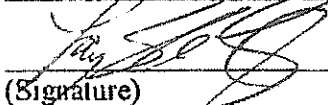
SAID PROPERTY, located in the West Ashley area (approximately 0.28 acre) to be annexed is identified by the Charleston County Assessors Office as Property Identification Number: TMS# 353-14-00-216 (1848 Sandcroft Drive).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

Dated this 17th day of  
July, 2017


FREEHOLDERS (OWNERS) SIGNED

DATE OF SIGNATURE

  
(Signature)

1/18/17  
(Date)

Larry Shane Langdale  
(Print Name)

  
(Signature)

7-18-17  
(Date)

Kelly Evans  
(Print Name)

# City of Charleston Annexation Map

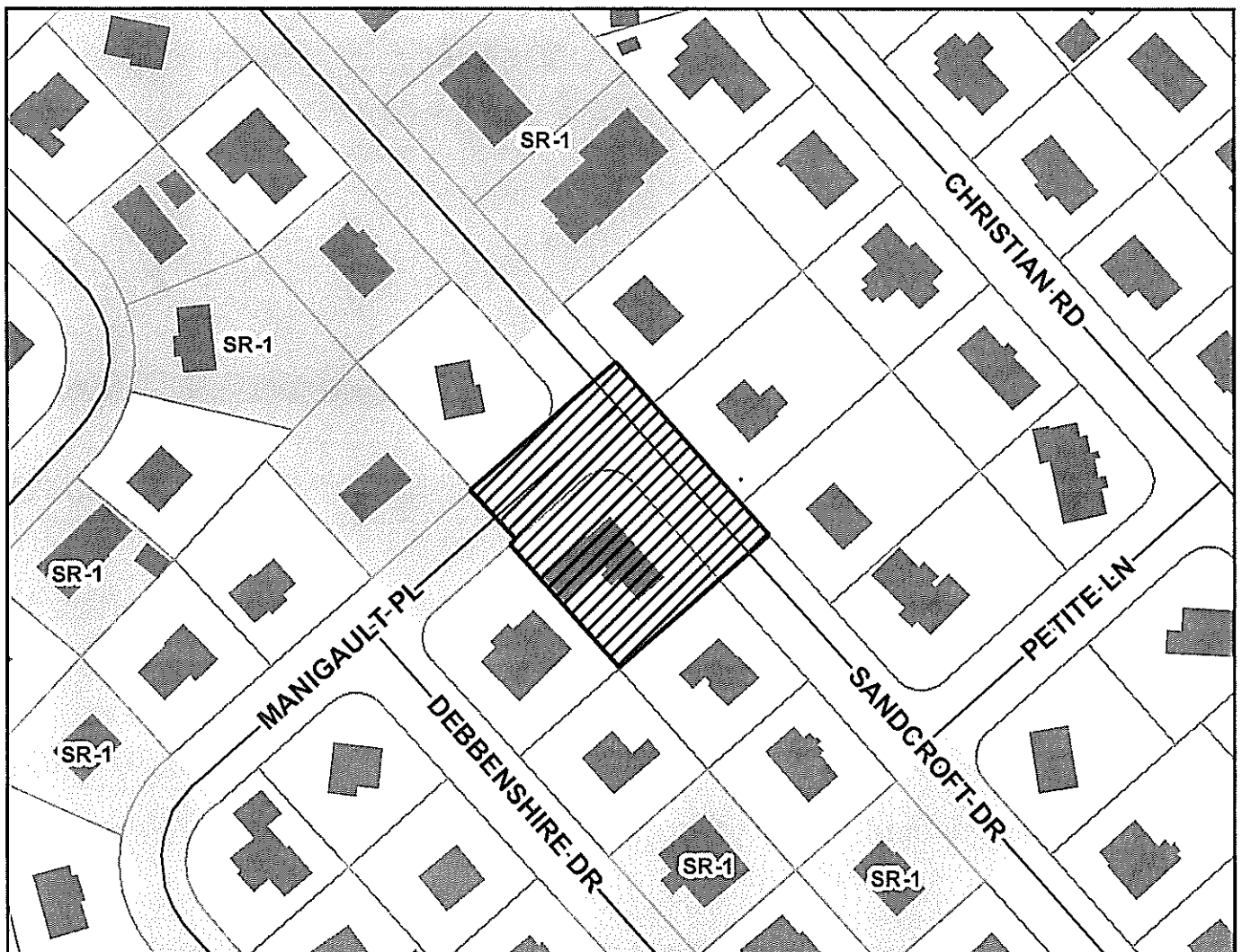
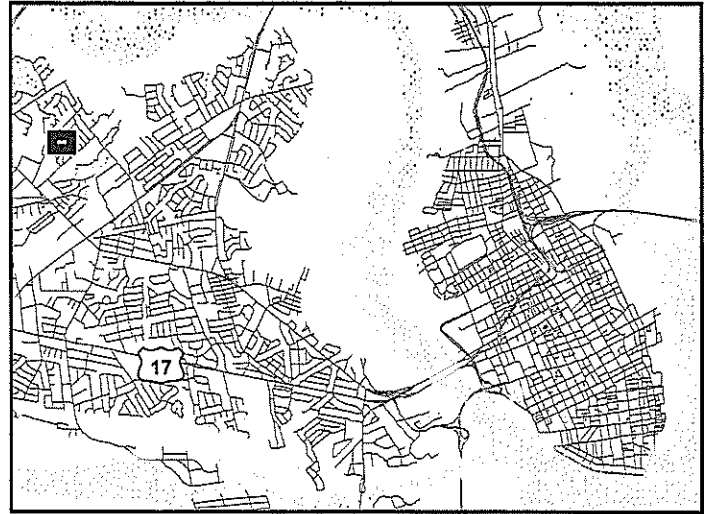
Parcel Address:  
1848 Sandcroft Dr

TMS #:  
3531400216

Acreage: 0.28

City Council District: 7

West Ashley



Subject Property



Corporate Limits  
City of Charleston



Water

